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Since the first decades of the twentieth century, educators have experimented periodically with the device of contracting with their students over questions of the content, pacing, and method of the students' learning experiences.[1] Curiously, although a contract is a quintessentially legal concept, and learning contracts have been

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1. The popularity of learning contracts has varied. They were held in high regard in the 1920s, when the Dalton [Massachusetts] Plan, involving contracts for students' work schedules and "job cards" by which they measured their progress, was considered a desirable innovation. Later the idea of student–teacher contracts fell into disuse, but it enjoyed a resurgence of popularity in the early 1970s. After 1977 the device lost favor once again, although at least one educator perceived another wave of interest beginning

used in a variety of educational settings,[2] there seems to be no literature on their use in law schools.[3] We have employed several types of learning contracts in a few law school courses. Our experience indicates that some of the advantages that have been realized through contracting in other educational realms may also be achieved in legal education.

This Article begins with a description of educational contracting and a review of the literature. The body of the Article focuses on our use of formal, written learning contracts in a clinical course taught at Georgetown University Law Center. We describe the method of contracting, the key provisions of most contracts and the response of students to the use of this device. Finally, we speculate about possible uses of learning contracts in nonclinical law school offerings.

I. LEARNING CONTRACTS

A learning contract has been described as a "document drawn up by the student in consultation with [an] instructor specifying what and how the student will learn in a given period of time."[4] A primary aim in the use of learning contracts is to encourage individualized learning by tailoring the educational experience to the objectives of individual students.[5] Through the contracting process of identifying and articulating their goals, students in a class realize what objectives members of the class have in common and which ones conflict. A particular student may also become aware of conflicts among his or her personal goals. Once the conflicting and common objectives are identified, students and instructors are able

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in 1983. Klingstedt, *Contracting for Individualization: Let's Take a Fresh Look*, EDUC. TECH., Mar., 1983, at 27, 27.

2. Learning contracts have been used in elementary education, *see, e.g.*, Wilson & Gambrell, *Contracting—One Way to Individualize*, 50 ELEMENTARY ENG. 427 (1973); physical education, *see, e.g.*, Darst & Model, *Racquetball Contracting*, J. PHYSICAL EDUC., RECREATION & DANCE, Sept. 1983, at 65; education of those with learning disabilities, *see, e.g.*, Principato, *Effect of Goal–Setting with Feedback on Productivity in a Sheltered Workshop*, 18 EDUC. & TRAINING MENTALLY RETARDED 141 (1983); and undergraduate education, *see, e.g.*, Barlow, *An Experiment with Learning Contracts*, 45 J. HIGHER EDUC. 441 (1974); Fedo, *A Metropolis as College Campus*, AM. EDUC., Apr. 1973, at 65.

3. A search of the "legal education" and "legal education: teaching" listings in the *Index to Legal Periodicals* for the years 1967 to 1983 reveals no articles on this subject. One article on the use of learning contracts in a business law class seems to be the only documented report on their use in a related setting. *See* Singer, Polczynski, & Shirland, *Motivating Students: Contract Grading and the Case Brief*, BUS. L. REV., Fall 1977, at 14.

4. Barlow, *supra* note 2, at 441 (describing the use of learning contracts in a college philosophy course).

5. Riegle, *The Limits of Contracting*, HIGH SCH. J., Oct. 1978, at 13, 13.

to work together for a better learning environment. Though it may be unreasonable to expect teachers to reshape curricula entirely, most are willing, particularly in small classes such as seminars, to make adjustments to suit the interests of their students and to provide individualized instruction when possible.

Advocates of the contracting process seek its use for many reasons beyond the goal of individualized instruction. One objective of contracting is motivational. If students have a significant role in determining the content and the process of their education, it appears that they will work harder at learning. Indeed, comparative studies suggest that students working under contracts "developed a greater sense of personal responsibility for acquiring and applying improved study skills" than did students taught by traditional methods.[6] Use of learning contracts has led, in at least one setting, to a "level of commitment [that] was significantly more pronounced . . . than among previous students."[7] Enabling students to set their own pace of learning is another goal of contracting. A frequent term in learning contracts allows students to specify how much work they expect to complete within a given period of time, so that students are not forced to meet externally imposed, arbitrary norms.[8] Also, learning contracts are said to be valuable because they enable students to experience working closely with another person.[9] And finally, an additional goal of contracting in the classroom is to change the balance of power between the teachers and the students by creating a less hierarchical educational experience. This objective is tied to the others. Students who think critically about what and how they are learning, and who take responsibility for the quality of their own education, may enjoy greater satisfaction because they have more control over their experience.

The method for creating and implementing learning contracts varies with the level of education in which the device is employed and with the desired objectives. Contracts may be drafted primarily by the student or by the instructor, or they may be cooperatively formulated. One author has identified twenty-seven variants of responsibility-sharing in the formulation, assignment, and evaluation

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6. Goldman, *Contract Teaching of Academic Skills*, 25 J. COUNSELING PSYCHOLOGY 320, 323 (1978). In a study-skills course at a large Midwestern university, students were divided into contract, noncontract, and control groups. Students in the contract group "gained better grade point averages and maintained their improvement in grades throughout the two years of the follow-up study." *Id.*

7. Barlow, *supra* note 2, at 446.

8. *See* Christen, *Contracting for Student Learning*, EDUC. TECH., Mar. 1976, at 24, 24.

9. *Id.*

of learning contracts.[10] Individualization may be enhanced by permitting students a larger role in formulating contract provisions, but individualization is possible even when the instructor develops each student contract.[11]

The literature on learning contracts is hardly voluminous, but several reports on their use have been published. Some reports try to be relatively scientific by comparing the performance of students working under contracts with that of students in a noncontract control group,[12] while others are impressionistic.[13] Results of controlled experiments using learning contracts in various settings suggest that contracting produces benefits ranging from increased study time and improved test scores[14] for undergraduate psychology students to greater productivity for disadvantaged adolescents in a vocational training program.[15] The impressionistic articles in favor of learning contracts are equally positive,[16] the most cautionary of them warning only that "contracting is by itself no panacea" and that "what may ensue are . . . deplorable practices such as substituting quantity for quality."[17]

II. THE CONTRACT IN THE CLINIC: GOALS AND PARADIGMS

A law school clinic[18] is one setting in which learning contracts

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10. Riegle, *supra* note 5, at 14–15.

11. *Id.* at 16. For example, in a typical pattern of contract development (involving contracts to improve study skills), college students were asked to state goals by declaring what skills they wanted to improve. A teacher and a student together identified behavioral changes that might hinder or advance the student's goals. The instructor then helped the student to define smaller achievable objectives leading to the goal. When the instructor and student had agreed on the subgoals and the methods for achieving them, they drew up the contract, which both then signed. On a date specified in the contract, the student reported progress to the instructor, and the two of them drew up a new contract, taking into consideration the achievements of the previous period. Goldman, *supra* note 6.

12. *See, e.g.*, Fedo, *supra* note 2, at 7; Barlow, *supra* note 2; Christen, *supra* note 8.

13. Bristol & Sloane, *Effects of Contingency Contracting on Study Rate and Test Performance*, 7 J. APPLIED BEHAV. ANALYSIS 271 (1974); DiSilvestro & Markowitz, *Contracts and Completion Rates in Correspondence Study*, 75 J. EDUC. RESEARCH 218 (1982); Goldman, *supra* note 6. *See also* Kelley & Stokes, *Contingency Contracting with Disadvantaged Youths: Improving Classroom Performance*, 15 J. APPLIED BEHAV. ANALYSIS 447 (1982).

14. Bristol & Sloane, *supra* note 13, at 283.

15. Kelley & Stokes, *supra* note 13.

16. *See, e.g.*, Barlow, *supra* note 2.

17. Riegel, *supra* note 5, at 19.

18. A law school clinic is a program which "includes law student performance on live cases or problems, or in simulation of the lawyer's role, for the mastery of basic lawyering skills and the better understanding of professional responsibility, substantive and procedural law, and the theory of legal practice." ASS'N OF AM. LAW SCHOOLS-AM. BAR ASS'N COMM., GUIDELINES FOR CLINICAL LEGAL EDUCATION 12 (1980).

fit quite naturally into the curriculum. The faculty/student ratio in clinics is usually low in comparison to large lecture classes, making individualization of instructional goals, techniques, and content feasible. The students' desire for knowledge is heightened by fear of embarrassment and concern over injuring their clients in public proceedings. They are therefore willing to take additional time for orientation experiences, including a contracting process.[19] Students arrive in clinics with very different goals, which range from improving traditional litigation skills to more abstract types of learning such as developing a greater sense of self-confidence. The multiplicity of goals among clinic students makes the setting particularly appropriate for the use of learning contracts. Because most of the work that clinic students do involves skills that they have rarely if ever exercised, the variation among individuals' paces of progress is greater than in traditional courses. And the use of contracts draws attention to the relationships among the working associates, which is an important focus in the collaborative environment of a law office.

In 1976 and 1977 Michael Meltsner and Philip Schrag began to experiment with a kind of contracting process in their clinic at Columbia University Law School.[20] Clinic applicants were given a thorough description of the clinic's educational program and asked to sign a document in which they agreed to work on a range of goals that the instructors had defined as the broad objectives of the clinical program.[21] These goals included legal skills, learning skills, interpersonal and group dynamics, and personal self-awareness. Approximately half of the applicants elected not to enroll in the clinic after receiving the disclosure,[22] but the program filled all of its available slots with students who, through this process, "contracted" to work in a way compatible with the instructors' expectations. This simple form of contracting was used as a screening device rather than as a tool for individualizing instruction or for clarifying the clinic's educational methodology.[23]

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19. A clinic often accounts for 30% to 100% of the academic credit that an enrollee receives during the term. Therefore less time is demanded by a clinic student's other academic courses, and clinic students are better able to engage in less streamlined, more time-consuming educational exercises.

20. For a discussion, see Meltsner & Schrag, *Scenes From A Clinic*, 127 U. PA. L. REV. 1, 5 (1978).

21. *Id.* at 8–10.

22. *Id.* at 11.

23. Indeed, the instructors reported that "[s]tudent questions and comments [during the contracting process] often sidestep any discussion of these [learning] opportuni-

Since the fall of 1982 we have been engaged in a more ambitious effort to use learning contracts in a legal clinic. At the Center for Applied Legal Studies (CALS),[24] one of ten clinical programs at Georgetown University Law Center, we have made the contracting process a focal point of the admissions decision and of the subsequent relationship among instructors[25] and students who work together on cases. Students are admitted to the program under the disclosure techniques described above. In the program, students (known as interns) work with each other in pairs (which are called partnerships).[26] Each partnership chooses two instructors (advisors)[27] with whom it will work for the entire term. A partnership and its two advisors form a case team, and each case team is respon-

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ties and constraints and tend to focus on cases and clients . . . or workload . . . . A number [of students] use this meeting as an attempt to sell themselves to the supervisor." *Id.*

24. CALS is a 6-credit one-semester program offered each term for 16 second- and third-year law students. Georgetown students usually take between 12 and 15 credits per term.

25. Two of the instructors are members of the faculty. The other two are graduate fellows who receive a stipend while supervising in the clinic for two years to satisfy requirements for an LL.M. in Advocacy. Fellows are selected in a national competition from among candidates who desire to begin or continue careers as faculty members in law school clinics. Each of the four instructors has other teaching or writing responsibilities but spends most of his or her time on clinic work.

The fact that two of the instructors are graduate students and two are professors results in dramatically divergent salaries and professional statuses. But the status hierarchy perceived by the outside world does not determine or reflect how we work together in the clinic. Though there is some variation in responsibility, allocation of tasks, and authority within the clinic that corresponds to the staffing pattern, we try to make decisions consensually and to delegate work equally. For example, each of us teaches equal numbers of classes in the clinic and supervises the same number of students. Course materials are written collaboratively, and pedagogical decisions are made by the group of four instructors. Decisions about clinic administration are made consensually by the four instructors and the office manager. Hence this article has five authors, including all the CALS instructors from the fall of 1982, when the first written contract was introduced, until the spring of 1984.

26. Partnership formation is a complex process undertaken on the first day of each term. The students are permitted to pair with each other according to any method they select, but the group is required to discuss and reach consensus on a method before any selection of partners takes place. They may therefore choose to pair randomly, or on the basis of a limited number of obvious characteristics (such as gender, class schedules, personal appearance or participation in the first hour of the course), or they may decide to find out much more about each other (e.g., through an open or private interview process) before pairing. In any event they must cooperate in selecting a procedure for partnership formation. Choosing partners is the first occasion on which interns contract with each other. In this case, they do so in the group of all interns, rather than in their case teams.

27. In many clinics, the instructors are referred to as supervising attorneys, but we prefer to be "advisors" rather than "supervisors" to emphasize that we serve in supporting roles to the interns who bear primary responsibility for representing the clients.

sible for three cases during the semester.[28]

A. Educational Goals of the Clinic

The educational goals of CALS have strongly influenced both the process of contracting and the substantive contract terms for which we, as advisors, have often negotiated. An overview of those goals is helpful to an understanding of our development of learning contracts. Our primary objective is an ambitious one: to help law students learn to accept responsibility. It is odd that in the education of professionals who will be called upon to take large amounts of responsibility for the interests of their clients, law students are asked to assume less responsibility for their education than they did in elementary school, high school, or college. Relegated for the most part to large lecture classes, they have considerably less influence than they once did over what happens in the classroom, and they write papers less frequently than they did before they entered law school. Most of their learning is passive absorption. Students are not only alienated by this educational process,[29] but, in our experience, they become conditioned to expect passive roles in their first career experiences, and to accept unquestioningly the dictates of senior authorities. Many of them are apprehensive about accepting employment in settings (such as legal services offices) which are reputed to be less well equipped than law firms to offer constant supervision.

We try to empower our interns by pressing them to accept real responsibility, both for case management and for the nature of their educational experiences in the clinic. As elaborated later in this article,[30] we urge them to contract for control of their cases even to the point of permitting them to make case decisions entirely at odds with those that we would make if we were counsel for the client.[31] With respect to educational issues, we encourage interns to accept responsibility for such matters as deciding the agenda for team

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28. Each team usually handles one social security disability hearing before a federal administrative law judge and represents two consumers in disputes with merchants. The consumer-merchant disputes may be settled, tried before a court, or heard by an administrative law judge in the District of Columbia Department of Consumer and Regulatory Affairs.

29. *See, e.g.*, Margolick, The Trouble With American Law Schools, N.Y. Times, May 22, 1983, § 6 (Magazine), at 20.

30. *See infra* text accompanying notes 87–93.

31. The clinic is also serving clients. We therefore do not permit students to commit malpractice, and we intervene when we anticipate serious, imminent damage to a client's case. *See infra* text accompanying note 87.

meetings, determining how many drafts of briefs and other documents we will read, deciding whether or not we will be present at their client interviews, and conducting self-evaluation of their performance in court or in the clinic before receiving an evaluation from us.[32]

Our second objective is to improve the interns' approach to solving problems by encouraging thorough exploration of decisions made on case issues during the semester. Implementation of this objective requires the clinic's staff to practice law in slow motion, stopping to examine each decision point and to evaluate each step taken. Consequently we have an extremely low case load in order to provide interns with the time and support necessary for this scrutiny. This process helps interns discover the wide range of existing options and to question their own assumptions about the limits of the possible. In the clinic, apparently small or insignificant decisions are planned and evaluated in great detail.[33] As a prelude to this process, contract clauses are themselves analyzed in great detail, with advisors and interns working to develop acceptable wording. Such clauses are developed in order to facilitate attention to the details of law practice.

Our third goal is related to the structure of the case team; it explains why both the interns and their advisors work in pairs. We

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32. In addition to their cases, which demand ten or more hours of weekly work, interns have three hours a week of clinic classes in which all interns and advisors meet as a group. Interns are required to assume significant responsibility in some sessions for planning and leading the classes. In addition, interns must prepare for case team meetings; complete readings, written exercises, or role playing for weekly classes; and write a term paper on a topic of their choice. In virtually all of the classes, the advisors play a much less active role than do instructors in most law school courses and seminars.

33. In CALS such a trivial event as a phone call to opposing counsel asking for a week's delay in a hearing date might be discussed at several case team meetings. For example, the case team might discuss whether the request should be made by telephone, letter, mailgram or personal contact; who should make the call and to whom she should speak; and how the request might be phrased. Team members might anticipate the range of possible responses, and might consider whether anything had to be given up as the price of making the request; this inquiry might lead to reevaluation of the decision to ask for the postponement. The interns might rehearse the contact with the lawyer by role-playing it. After the actual contact was made, another case team meeting might be used to review the outcome. This retrospective review might include significant emphasis on process, such as an examination of whether the interns followed up any leads of the opposing counsel (such as hints about settlement) and if so, whether they did so by design or out of deference to the opposing counsel's greater experience. The case team might look at which intern did the most talking during the contact, and why, and at the emotions of the call and how they affected the outcome. The advisors would raise questions that the interns did not themselves identify, until the subject had been covered thoroughly. The meeting might conclude with an intern-run evaluation of what they had learned from this scrutiny of a minor incident.

make a serious attempt to teach collaboration, for we observe that law school atomizes students and makes them competitors with each other in preparation for careers in which, by contrast, nearly everyone works in a group setting.[34] Collaboration takes more time than individual work, but it produces better results[35] and is, we have found, more enjoyable. Collaboration skills are not entirely intuitive; they can be taught and learned. Conscious examination can significantly improve a lawyer's ability to develop and use such skills.[36] At CALS, advisors frequently look at whether members of the intern partnership are working in a cooperative fashion. Several clauses of most of our contracts pertain to the dynamics and study of collaboration. Moreover, negotiation of the contract is itself a collaborative venture, requiring cooperation within each of the two pairs comprising the case team, as well as between the interns and the advisors.[37]

A fourth goal of CALS is to help interns to explore and challenge their professional value choices. Clinicians have often agonized about the fact that most of their students use their clinic skills to provide superior service primarily to the wealthiest segment of society.[38] In keeping with our philosophy of empowering students rather than telling them what to do, we have not imposed a "career plans" test for admission to the clinic (though we continue to won-

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34. Two of us have taught large lecture courses in which we frequently have asked the students to turn to their neighbors, in class, and discuss a problem before the class discusses it as a whole. Most students like this device, because it enables them to test their ideas in a small group before risking them before a wider public; the eventual public responses seem more sophisticated as well. This practice simulates the common experience in actual legal practice, in which lawyers try their theories out on each other before pursuing them in public fora such as courts or legislatures. The authors are puzzled about why collaborative exercises of this sort are so rare in law schools.

35. The experimental data is summarized in Haft, *Business Decisions by the New Board: Behavioral Science and Corporate Law*, 80 MICH. L. REV. 1, 8–15, 22–23, 32–43 (1981). *See also* M. SHAW, GROUP DYNAMICS 60–68 (3d ed. 1981).

36. Some of the skills we hope to help interns develop in the clinic include taking leadership roles and facilitating decisionmaking in groups, delegating and accepting delegations of work, coping with differences in style or work habits, resolving interpersonal work crises and overcoming problems created by differences in approaches that are related to such characteristics as class, race, gender and age, as well as experience or personality.

37. Roger Fisher and William Ury have persuasively argued that negotiation may be viewed as a type of collaboration rather than as zero-sum competition. R. FISHER & W. URY, GETTING TO YES (1981). *But see* Condlin, *Cases on Both Sides: Patterns of Argument in Legal Dispute Negotiations*, 44 MD. L. REV. 1, 79 n.34 (1985) (criticizing Fisher and Ury). The negotiation of learning contracts illustrates their point, for although these negotiations often have an adversary quality, both sides have similar ultimate objectives.

38. *See* Meltsner & Schrag, *Report From a CLEPR Colony*, 76 COLUM. L. REV. 581, 627–28 (1976).

der whether it would be ethical and desirable to do so). Nor do we try to manipulate our interns into accepting public service jobs. We do help them to understand that, as lawyers, they will have the power to affect society and at the same time we try to nurture their sense of public duty. The clinic represents poor people because they need free legal assistance. A consequence of that representation is that interns have a unique opportunity to examine their own values as lawyers and to experience the satisfaction that results from using their skills to help the people whose needs are greatest.

This fourth goal may initially appear unrelated to the process of making contracts with students, though in fact it may be the most closely connected of any of our educational goals. By creating a learning environment that is less hierarchical than others in law school, by encouraging students to think about what and how they want to work and learn, and by encouraging them to question authority, we hope to encourage individuation, independent thinking, and idealism. By empowering our students, we make it easier for them to choose career paths different from those of their classmates. By offering them leadership opportunities and responsibilities through the contracting process, we hope to raise questions about whether the best training for new lawyers is to be directed by the hierarchy of a large bureaucracy, either public or private. By insisting that students articulate their goals for the course, for their cases, and for their careers, we ask them to take themselves seriously and to examine what they would like to accomplish.

Within this set of overall goals for clinical education, advisors have specific goals for the contracting process. These goals include, along with the traditional ones for the contracting process,[39] two additional goals—disclosure to interns of our expectations and development of instructor consensus on teaching techniques. Use of the contract facilitates full disclosure to the interns of our expectations. We hope each student will understand the clinic's standards of legal practice and the relationships between advisors and interns that we believe will create an optimal learning environment.[40] It is rare for a law school course to include several hours of discussions between teachers and students about educational requirements or methodology. Even if contracts were not used to individualize students' learning experiences, we suspect that students would be bet-

39. *See supra* text accompanying notes 5–9.

40. *See supra* note 27 and *infra* notes 87–93 and accompanying text.

ter equipped to participate in the clinic by virtue of the contract's function as a disclosure statement.

We also use the contract to be clear with each other about how we teach. Through periodic efforts to refine an acceptable draft contract, we are forced to examine our pedagogical objectives and expectations before we begin negotiation with students. Twice a year, the four instructors spend many hours reviewing a draft contract on which we have reached initial agreement. This draft and these discussions (or raging arguments, as they sometimes become) force us to rethink every aspect of our teaching roles. It would be possible for each combination of two of us to offer a different proposal to the interns we are about to advise. But we reach a consensus on a form that all four of us will start with—which students then use to develop clauses they would prefer—and in the process of reaching that consensus we give extensive thought to the teaching and learning patterns that we favor for the semester.

Beyond these unique goals, we use the contracting process as others have used it: to involve interns in planning their own educational experiences and to individualize what we offer particular partnerships. Given our commitment to certain basic educational principles such as intern responsibility for case decisions, the degree to which we actually permit individual variation may be assessed differently by observers. Some may see it as a radically innovative empowerment of students to determine, at least in part, how they will learn. Others, seeing that we, who are the "authorities" on education, start with a draft that we have formulated and that we restrict the areas in which students may modify the contract, may conclude that we permit the interns only a kind of tinkering around the edges, while really requiring them to be bound by a contract of adhesion. From this perspective, the disclosure aspects of our contracting process are far more significant than the fact that we offer individuation.

B. The Contracting Process

At the beginning of the term, CALS interns are given an Office Manual including a 130-page section describing the objectives and methodology of the clinic.[41] The section contains a chapter on case team meetings and learning contracts which gives the interns a good

41. The Manual is revised annually as the methodology evolves. A copy of the current edition is available on request, without charge, from the Center for Applied Legal Studies, Georgetown University Law Center, 600 New Jersey Avenue, N.W., Washington, D.C. 20001. A copy of the Fall 1983 edition of the CALS office manual is on file with the Maryland Law Review and will hereinafter be cited as Manual.

idea of their obligations in the contracting process, possible contract provisions, and a sense of the various roles the advisors will accept. The materials make it clear that although the advisors want to tailor their teaching styles to suit the needs of each case team as much as possible, there remain many limits.[42]

The Manual also includes a draft learning contract, which is reproduced as the Appendix to this article.[43] Each intern pair is requested to meet as a partnership before its first case team meeting and to discuss the advisors' draft.[44] The pair may scrap the draft entirely and propose its own, as long as the revised contract addresses the partnership's goals and how to achieve them.[45] The draft contract contains blank spaces indicating issues on which the interns have the most open-ended opportunities to shape the document. With respect to clauses describing clinic methodology, on the other hand, the advisors have set forth specific suggestions that they are less likely to change.[46]

The partnership is asked to bring its own proposed learning contract to the first case team meeting.[47] The case team is not expected to reach agreement on all proposed clauses at its first meeting, but the advisors do urge the interns to complete negotiations within two or three meetings, because it is difficult to get started on the cases without agreement on the ground rules of the case team relationship.[48]

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42. For example, the advisors will not agree to a contract in which they are assigned responsibility for handling cases or for directing case decisions. Such provisions directly conflict with the clinic's educational philosophy of intern responsibility for cases, which students accepted when they entered the clinic.

43. The draft contract [hereinafter cited as Contract] is reproduced in the Appendix, *infra*. This contract form is the one we used during the Spring of 1984, but the draft contract is revised at least annually to take account of our experience with it.

44. Manual, *supra* note 41, ch. 3, at 5. It may seem perverse that in a program in which we are trying to increase students' power to create the learning environment that is best for them, we *require* learning contracts. We explain that we accept principal responsibility for the clinic's overall plan but that we believe the details of educational design "should be developed with substantial input" from the interns. *Id.* By contrast, interns are to exercise primary responsibility for litigation, with substantial input from advisors. *Id.* ch. 3, at 11–12.

45. *Id.* ch. 3, at 5. To date, however, although all but one pair (out of the 32 pairs with whom we have contracted) have proposed changes in our draft, none has been so adventuresome as to counterpropose an entirely new draft.

46. Interns are free to shape the contract in the areas affecting their management of cases and the case teams' patterns of interaction, but we are reluctant to allow changes that alter the overall methodology of the clinic. See for example Contract clause 4.

47. Manual, *supra* note 41, ch. 3, at 10.

48. The interns' desire to stop talking about contracting and get on with the main work of the clinic (learning through the experience of representing clients) is probably

C. *Advisors' Role*

Despite the advisors' greater influence over the form of the learning contract, their draft gives interns most of the control over how they will manage their cases and what will happen in the case team's meetings. This bias in favor of intern responsibility is part of the CALS philosophy, although it is not a necessary concomitant of contracting. In a different program, the instructors' draft contract could either propose stronger student leadership or greater control by instructors.[49]

Although we make strenuous efforts to explain clinic procedure to interns, most applicants intuitively expect a law firm model, in which the people who are senior in years also hold the power to make virtually all important decisions. To avoid misunderstandings that could make contracting a futile exercise, our written description of the contracting process asks interns to consider six paradigms of relationships between us and them—three that we discourage and three that we encourage.[50] Our goal in contracting is to reach agreements that avoid casting us in roles of supreme authority and encourage, instead, our position as important resources for the interns.

It is apparent from the advisors' goals, described above, that we have a profound aversion to telling interns what to do on their cases. Not only does such authoritarian direction convey a disempowering message about the role of a beginning professional, but it is an inefficient method of instruction as well.[51] While avoiding the role of *boss*, we also want to avoid becoming the interns' coequal *partners*. Interns must see the clients as their clients, the case decisions as their choices, and they must understand that our role with respect to case handling is limited to assistance with planning,

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the prod that most prompts an end to the period of contract negotiation. During the period before a learning contract is signed, the role relationship clauses proposed by the advisors in their draft are in effect. Manual, *supra* note 41, ch. 3, at 5. Working under the advisors' draft as the interim rules for a week or two may give team members a better basis for judging whether these terms will prove useful for a longer period.

49. There remains the paradox inherent in trying to empower students by arrogating to ourselves the power to delegate responsibility to them.

50. Manual, *supra* note 41, ch. 3, at 11–13. The paradigms we discourage are bosses, partners, and leaders. Those we encourage are resources, catalysts and process consultants.

51. Avoiding this paradigm is made much more difficult by the fact that the advisors grade the students. *See infra* note 114. As for case management though, within a few weeks the interns know so much more about their cases than we do that it would be unwise to override their judgment except on rare occasions.

observation, and evaluation.[52] Although most partnerships understand and accept our reluctance to play an equal role in decision making, we have had a few experiences in which a pair of interns has insisted on making us co-equal partners for some case purposes. When the interns have had persuasive reasons for their insistence we have acceded to their desires, but these occasions have been quite rare.[53]

Just as we eschew primary responsibility for case decisions, so we avoid becoming *leaders* of the case team's learning. We encourage the interns to accept contract clauses giving them control over the case team's agenda, including responsibility for deciding what preparation each member of the team should undertake before each meeting. We want interns to view us as *resources* for the case team, able to contribute our skill and knowledge when called upon to do so. In addition, we hope that they will use us as *catalysts*. In this role we try to help interns to identify and refine unarticulated goals and develop plans for achieving them; to identify or highlight behavior that is inconsistent with stated goals; and to ask short questions that release floods of self-examination or problem-solving by the interns. Finally, we have a special responsibility, as *process consultants*, to raise questions involving interpersonal relationships and group dynamics, because these issues are so rarely addressed elsewhere in the curricula of law schools. We want to help interns to come to grips with process issues such as how they work in a professional setting; how they relate to their partners, advisors, non-lawyer office staff, clients, opposing counsel, and judges; and how they feel about the practice of law.[54] We encourage them to agree to clauses that put these issues prominently on the case team's agenda

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52. We want to conceptualize a case team not as four people working equally on a case but as the intern partnership working on all aspects of the case with occasional limited input from two other people who have some expertise to offer. This model encourages interns to ask questions about and to discuss all the aspects of their cases, but the primary responsibility for making decisions (including decisions about when and how much the advisors should be consulted) is theirs.

53. We have served as co-equal partners for interns who were convinced (and were able to convince us) that the decisionmaking required by a case was beyond their knowledge at that stage of the semester. Even in an instance such as this we try to limit our input to planning and decisionmaking, leaving the execution, such as client contact or arguing in court, to the interns.

54. For a discussion of the relevance of interpersonal issues to law practice, see Himmelstein, *Reassessing Law Schooling: An Inquiry Into the Application of Humanistic Educational Psychology to the Teaching of Law*, 53 N.Y.U. L. REV. 514 (1978). For a list of 39 hypotheses about the application of group dynamics theory to legal work in groups, see Manual, *supra* note 41, ch. 6, at 13–14.

and give us a role in addressing them.[55]

III. THE CONTRACT IN THE CLINIC: ISSUES AND EXPERIENCE

The following discussion of issues and experiences in our use of learning contracts is organized to parallel the order in which these issues appear in our draft, printed in the Appendix.[56] Our focus is on issues of process arising from the use of learning contracts.[57]

A. Parties

The first clause in the advisors' draft contract identifies its parties. The fact that both interns are to be bound by the same contract has made a significant difference in many case teams. When interns realize they will have to make a joint proposal to the advisors, they devote more time to developing the proposal than they would if each could merely fill out a form on his or her own. Developing a proposal is a partnership's first experience of the pleasures and difficulties of collaboration. During the process of preparing for the negotiation with the advisors, the intern members of the team discover whether their own personal goals mesh well or portend conflict. Sometimes, the goals interlock nicely,[58] but in other cases conflicts which may dog a partnership all semester may emerge.[59]

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55. Many students tend to select this clinic because they are interested in (or desperate for) course offerings in which they can directly address questions about how they feel about law practice and how they perceive themselves as developing lawyers. Recognizing that this is a difficult and sensitive matter to teach, and realizing that not all students are interested in talking about personal issues, we do not force it on those who wish to keep a greater distance. In contract negotiations it is particularly useful to determine how process issues will be handled in light of each team member's personal goals in this area.

56. Contract, *supra* note 43.

57. Despite the prominence given such matters here, discussions of the contract and other aspects of the advisor/intern relationship accounts for only 15 or 20% of all time spent in case team meetings. Other published articles include passages exemplifying the substantive content of case team meetings and group seminars in clinics in which the interns similarly have primary responsibility for litigation planning and execution. *See, e.g.*, Meltsner & Schrag, *supra* note 20, at 25–31, 44–58; Meltsner & Schrag, *supra* note 38, at 611–23.

58. For example, one intern tended to take on too much responsibility in groups and wanted to work on letting others do their share. Her partner wanted to become more responsible and assertive. In another team, one partner wanted to become more assertive while his partner wished he could be less overbearing as a leader.

59. One such conflict that appears with surprising frequency is the tendency for male interns to expect female partners to do much of the routine labor such as file maintenance. One intern wanted to practice delegating work to his partner, but she resented his efforts to fob off tasks in which he was not interested. The pattern appeared early and was the topic of frequent case team discussions. Contract provisions often make it

B. Duration and Renegotiation

Although a semester is a relatively short period of time in which to cement a set of relationships among four members of a working group, we encourage interns to write initial contracts for a shorter period, and to review and renegotiate them part way through the term.[60] We did this initially because we assumed that learning contracts were so unfamiliar to most students that partnerships would not be able to appreciate the effects of clauses they agreed to until they lived under a contract for at least a few weeks. Our assumption about interns' initial understanding of the process was correct, but our proposed solution, to renegotiate, has been only somewhat successful. The initial negotiations over contract terms are often long and arduous, but the renegotiations, when interns are far more sophisticated about the process, tend to be much more perfunctory because of students' attitudes towards the process.[61]

Despite the problems with required renegotiation, this process does serve a valid function. When real problems arise in the relationships within the case team, renegotiation provides an easy vehicle for discussing and remedying them. Renegotiation of terms is available at any time and advisors are always willing to consider proposals for contract modification. Moreover both advisors and interns have used proposals for renegotiation in order to call to the team's attention some troubled facet of the working arrangement.[62]

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possible in case team meetings for either advisors or dissatisfied partners to raise with safety issues about gender, race, or status, or to discuss other aspects of partnership interaction.

60. *See* Contract, *supra* note 43, cl. 2.

61. After spending a month or six weeks working on their cases, many interns have little desire to put aside the case work, even temporarily, to concentrate on reorganizing their relationship with each other or with the advisors. Interns who notice that the expiration date of their contract is approaching (or has passed) frequently list contract renegotiation on the agenda of their case team meetings for several weeks in succession, but never manage to reach that agenda item.

62. In one team, the interns had begun to work on two of their cases but seemed to be dragging their feet with respect to meeting their third client and starting to work on her case. The interns did not take seriously the advisors' expressions of concern about this until the advisors suggested that the team consider modifying the contract to provide that the interns need represent only two clients. Translating the issue from one of slow action to one of a change in the basic obligations of the partnership alerted everyone to its seriousness. The interns rejected the suggestion and promptly met with their client.

In another instance, a pair of interns tried, at the beginning of the semester, to negotiate a clause which would have required the advisors to answer any and all questions. The advisors resisted, hoping that the interns would soon gain confidence and become more independent. The interns reluctantly accepted the advisors' proposed clause which counseled some restraint in responding to questions. The progress of the

C. *Goals*

An early and prominent feature of the advisors' draft contract is a long section in which the interns are asked to specify their goals for the contract period.[63] When we first developed a form for a learning contract, we provided a long and explicitly nonexclusive list of possible goals and asked interns to select three goals from the list or from their own needs.[64]

The list included both traditional lawyering skills such as learning about interviewing, negotiation, or witness examination, and more general interpersonal and self-development skills such as learning to become more (or less) competitive, learning to assume leadership, and having fun in the practice of law. Including both types of goals in our list proved unsuccessful for several reasons. Although we intended the list to broaden the students' horizons, many interns listed only three of the most traditional skills as goals. While their choice in this manner usually reflected anxiety about addressing more personal issues, we were at fault for asking them to select only three goals, and structuring the list so that they had to choose between, for example, learning interviewing and learning assertiveness. Furthermore, we found that we were sometimes unable to deliver what we promised because the exigencies of cases often determined which skills interns would have an opportunity to hone. When cases thwarted interns' achievement of practice goals, we tried to supplement the case experience with simulations, but the demands of the live cases often prevented extensive use of simulation as a supplemental device.[65] In short, actual work did not always

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team was slow, but neither interns nor advisors were aware of the source of the problem. When the initial contract expired, the interns expressed their frustration with the advisors' withholding posture, and they proposed rewriting the offending clause so that they could more easily call on the advisors for help. The advisors finally heard the interns' distress, recognized that this team needed the help that its intern members had asked for all along, and acceded to their request.

63. Contract, *supra* note 43, cl. 3. The placement of this clause in the contract reflects the authors' belief that an explicit focus on goals is a valuable aspect of any professional task.

64. We imposed a numerical limit on the number of goals that could be listed in order to demonstrate that not everything could be accomplished in one semester. This restriction prevented interns from avoiding hard choices by listing everything and forced them to set priorities among numerous goals.

65. On simulation in legal education, see M. MELTSNER & P. SCHRAG, TOWARD SIMULATION IN LEGAL EDUCATION (2d ed. 1979); Harbaugh, *Simulation and Gaming: A Teaching/Learning Strategy for Clinical Legal Education*, in ASS'N OF AM. LAW SCHOOLS-AM. BAR ASS'N COMM., GUIDELINES FOR CLINICAL LEGAL EDUCATION 191 (1980); Hollander, *The Simulated Law Firm and Other Contemporary Law Simulations*, 29 J. LEGAL EDUC. 311 (1978); Schrag, *Teaching Legislative Process Through an Intensive Simulation*, 8 SETON HALL LEGIS. J.

involve progress toward stated goals.

To address these problems, we divided goals into practice skills and professional development issues. For practice skills, the contract merely lists major areas of legal activity, and interns are told that, although the nature of their cases will largely determine which skills they exercise most, they can initial two or three skills on which they wish to place special emphasis. Much more attention is paid to the other part of the list of goals. Each intern is asked to list three professional goals, and to specify obstacles that might prevent him or her from achieving these goals during the semester. Because each partner may have vastly different objectives, we permit each member of the pair to list these goals and obstacles separately. We continue to provide a long menu of possible professional goals to start interns thinking about the wealth and variety of nontraditional goals that may be pursued in a law school clinic.[66] Some interns

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19 (1984). CALS offers several skill simulations in connection with its classroom component. In addition, interns whose goals include special attention to particular skills may work on extra simulations of that skill in their case teams and may call on us to design such exercises for them. One partnership conducted an extra (simulated) negotiation in this way. Another practiced opening statements by requiring one team member to stand at the beginning of each case team meeting and recite the latest developments in a case. Another organized a formal debate between the intern members on a public affairs topic unrelated to the subjects arising from their cases.

66. Our list includes the following possibilities:

1. Learn to develop productive work relationships with clients.
2. Improve ability to collaborate with a partner.
3. Learn to accept constructive criticism.
4. Learn to give constructive criticism.
5. Improve time management skills to gain control over work and to enhance ability to work under time pressure.
6. Learn to evaluate your work relationships with others through greater sensitivity to emotions.
7. Learn how to experiment and to play roles without embarrassment.
8. Improve your sense of humor to enhance enjoyment of and effectiveness at work.
9. Learn to get angry at, or to confront conflicts with, advisors, coworkers or clients in a manner that produces desired results.
10. Learn how to relate to authority figures and how your feelings about authority affect your work.
11. Become more sensitive to ethical issues.
12. Learn to compete more effectively.
13. Learn to cooperate more effectively.
14. Obtain advisor approval in the form of a good grade.
15. Learn to rely less on advisors to work effectively.
16. Improve ability to work with people of differing age, sex, race, economic status, etc.
17. Become more assertive.
18. Learn to design and run a meeting in which work is accomplished and to choose among possible roles in which you could promote the work of a group.

merely pick from our menu, but many are inspired to elaborate on our suggestions or to develop ideas of their own.

Student goal statements clearly helped us to shape our overall teaching objectives. For example, one of the most significant things that we learned as a result of asking many partnerships to specify their goals was that a very large number of interns enroll in our clinic in order to improve their ability to be assertive. Some of us tended to think, before we encouraged such explicit discussion of goals, that nearly all law students were assertive, and that people who lacked that quality tended to choose other professions. The contracting process quickly demonstrated the error of that assumption,[67] and led us to concentrate fairly heavily on helping our interns in this direction.[68]

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19. Learn to work more effectively as a member of a group.
20. Increase confidence about professional abilities in order to improve productivity or to overcome feeling intimidated by lawyers, courts or bosses.
21. Study the social system within which you work and integrate knowledge into action within that system.
22. Learn to shoulder responsibility better.
23. Learn how to approach work in a more creative manner.
24. Become more aware of and sensitive to nonverbal communications.
25. Become more introspective.
26. Have more fun than you have been having in law school.
27. Learn to be a better leader.
28. Learn to be a better follower.
29. Become better able to evaluate risks inherent in particular courses of action, and increase ability to accept risks.
30. Learn to use inexperience or lack of knowledge to your own advantage.
31. Learn how to make better use of resources available to you.
32. Learn about the dynamics of small professional groups to improve ability to work in such settings.
33. Learn to inspire others' confidence in you or to be better liked.
34. Learn to delegate tasks.
35. Improve ability to say no to unwanted responsibilities.
36. Learn to make decisions more deliberately by broadening the range of options considered and selecting rationally among them.
37. Decide what part of the law—if any—you wish to pursue professionally.

67. A related assumption—often made by law students—is that lawyers are always aggressive and that students of the law need to learn that trait in order to be successful. Our interns often discover during the course of a semester that practicing law involves a broad range of styles. By the end of the semester they may come to believe that they can be lawyers without giving up their own personalities.

68. Specifically we have designed classroom exercises in which assertiveness is fostered. In one of them, for example, interns make five-minute opening statements on videotapes, which are reviewed by small groups and then by the entire clinic staff. In a broader sense, our refusal to undertake case work (e.g., to telephone opposing counsel or to sit with interns at the counsel table during a hearing) fosters their assertiveness. In addition, there are sometimes serious conflicts between interns and advisors, and learning to fight with us may help them to fight an adversary. During one semester, the

The advisors' form contract calls only for the interns, and not the advisors, to state their goals. The advisors have stated their *institutional* goals at length in the Manual, but the pair of advisors working with a particular partnership may have some additional goals in connection with teaching a specific pair of interns. Some interns have complained that the contract contains a power imbalance since the advisors need not state their personal learning goals in writing.

Our response is to point out that the alleged power imbalance is real: we are teachers and they are students. In addition, the clinic's primary goal is to create a learning environment for them, not for ourselves. However, if we do have special goals in working with a case team, we usually state them orally, and we have also agreed to requests to put them in writing.

We have experienced mixed success in our inclusion of a separate section in which the interns list the obstacles which they expect might frustrate achievement of their goals. We had hoped that interns would carry the analysis one step further, discovering introspectively some habits that they might want to change.[69] Somewhat to our surprise, the obstacles section of the contract often elicits a flood of information. Even those interns who do not write much about obstacles on their contracts are often interested in verbalizing their concerns. Discussions of goals and obstacles frequently consume the entire first meeting of the case team.

The last part of the goals section of the form asks the interns to state, jointly, how they plan to achieve their goals and to overcome their obstacles. This section often produces no third level of information, partly because at the beginning of a semester, the interns do not yet have a clear enough idea of what they will be doing in the clinic to make such a plan. Occasionally interns develop some new insight or plan by asking themselves this additional question.[70]

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interns as a group protested vigorously the advisors' decision that each of them had to handle three cases. After a heated meeting on the subject, the advisors backed down. The next week the advisors noted that the interns had suddenly become much more confident in pressing their clients' claims on judges and agency personnel.

69. An example from the Manual of how this might work is that if an intern's goal is to use his inexperience to his advantage, it is helpful for him to be aware of the tendency to hide his inexperience. Some interns have been able to identify obstacles of this sort while others merely state obstacles as the opposite of their goals. This feature of the contract was derived from an exercise in which Columbia University clinic students revealed in a plenary session their goals for the course and the obstacles that might impede progress. *See* Meltsner & Schrag, *supra* note 20, at 13.

70. Two interns who were especially worried about their ability to collaborate pledged to have dinner together at least once a week. Another pair, for which gender seemed likely to be a problem, agreed to meet regularly to discuss gender issues. In the

D. Role Relationships

The rest of the contract pertains to the relationship among the members of the case team. In the first version of the learning contract in 1982, we wrote out a series of boilerplate clauses defining relationships and told interns that they could propose changes, if they wanted to do so. But virtually no one focused on these clauses until we tried to require interns to honor them after the contract was signed. At best, this taught the interns how little attention is paid to boilerplate in standard form contracts of any kind. A year later, wanting interns to pay serious attention to structuring their relationships with each other and with us, we revised the format of the contract. We printed only one or two clauses on a page and left blank space between clauses, in which interns were required to write some commentary. They could explain proposed changes in a clause or, if they proposed to accept our draft, why they were accepting it. Our goal was to encourage discussion and more genuine agreement with respect to each contract clause.

Our experience with the second edition of the contract has been mixed. With most teams, we achieved our goal of fostering real discussions about the pedagogical issues raised in the clauses that had previously been treated as boilerplate. The contract negotiations were approximately twice as long under the second edition (averaging about three hours), and as a result, there was a higher level of initial understanding between interns and advisors about how we expected to work together. The interns were less surprised by the nature of the relationships that emerged during the work on cases. Also, the number of initial changes made in the contracts increased. The interns gave us better information about what they wanted from us, and how they felt about the low safety net and the high level of intern responsibility that we thrust at them.

On the other hand, most interns reported that writing commentary before the meeting to negotiate the contract was a waste of time. The product corroborates their experience; while many of the proposed amendments to the contract are significant and interesting, the commentary tends to paraphrase the language of the clause and rarely adds any new ideas. These results suggest that further adjustments in the disclosure and negotiation process may be desirable.

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fall of 1985, the advisors modified their proposed draft of this section to ask interns to develop a short-term plan for work on one of their goals. This more limited task has inspired many concrete, creative projects.

The following discussion of the clauses on case team relationships that are included in the contract reveals information about our experience with contracting. At the same time, it explains many principles of our teaching methodology.

1. Agenda Control.—Control over the team's agenda is the first relational issue that we raise. We have found this clause to be one of the most important in the contract, and an explicit focus on the issue of agenda control at the outset of the process seems to be one of the most useful innovations in our work.

The advisors' draft calls for interns to take the lead in developing and executing the agenda for each case team meeting; advisors may propose additions or changes to the agenda.[71] Although a few teams have had some difficulty in grasping what was meant by agenda control and, throughout the semester, expressed distress about our failure to guide their meetings, most interns have responded enthusiastically to the opportunities for control.[72]

Interns try various techniques of agenda control.[73] In general, meetings have been most successful when agendas are well-designed and focus on only a few issues; when approximate time allocations are listed on the agenda for each item; and when one or both interns take responsibility for moving to the next item or revising the agenda when the internal time limits are reached.

The most effective agendas are those in which specific problems have been selected for in-depth discussion, and when reporting of events is kept to a minimum. Most interns' ability to run a meeting improves during the semester as the interns gain experience. An added benefit to interns who are forced to direct case team meetings is the opportunity to learn important legal skills such as how to estimate how much discussion a particular subject will require; how to keep a discussion from digressing too far; how to control time in a

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71. Contract, *supra* note 43, cl. 4(A)(1).

72. Most interns have understood the concept, but they have experienced varying degrees of success in agenda management. We have noticed a striking correlation between a partnership's ability to manage the agenda of the meetings and its ability to manage its litigation. Many of the same skills, such as planning, organization, and time management, are required by both tasks.

73. Variations include typed or handwritten agendas, and oral descriptions; reducing agendas to writing has been beneficial for nearly all case teams. Some partnerships provide the advisors with copies a day in advance, while others bring them in at the last moment. One team contracted to provide its advisors with the agenda two days in advance, and required the advisors to propose any additions one day in advance. This procedure proved unworkable because the cases presented frequent late-breaking developments. The contract was amended to reduce the time periods.

meeting; how to decide when to change the agenda; and how to handle with flexibility the unanticipated issues that invariably arise. Many of them discover that the skills they use in leading case team meetings can be put to use immediately in other small groups to which they belong, such as law school organizations. This reinforces their belief, and ours, that the students are developing abilities that they will be able to use when they begin to practice law. But the process of developing effective agenda control is often somewhat bumpy, and dealing with issues about controlling the case team meetings often exposes fundamental issues affecting all the other work of the case team.[74]

2. Pre-meeting Decisionmaking.—Another very important clause in the advisors' draft requires interns to discuss and to make at least tentative decisions on all issues that they expect to arise during the case team meeting, on which decisions are required.[75] This clause limits our role with respect to the cases, recognizing and respecting the primacy of the interns' own work relationship. It forces the members of a partnership to resolve their disagreements and to take primary responsibility for their cases. The emphasis on "decisions" points interns away from using meetings merely to report to us on what they have done, and encourages them to make at least part of each meeting a working session, focused on imminent case problems.

The advisors have invoked this clause of the contract frequently, asking whether an issue has been sufficiently discussed or

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74. One partnership at first put far too many items on its team's agenda, and never finished more than half of what it set out to do. Its members left each meeting feeling frustrated. When the interns were asked whether, as they planned their agenda, they had in mind particular portions of time for the various items, an important disagreement emerged. One of the interns had wanted strict internal time boundaries, with neither intern designated as a leader or facilitator of the case team meetings. Her partner had wanted an open-ended agenda subject to control of one of the interns, a duty that would alternate from meeting to meeting. Inability to agree on which method was correct resulted in a lack of internal boundaries within the agenda, and no facilitator to push matters through to conclusion. Advisors' questions about this issue caused one intern to observe that they were really competing for power and for the approval of the advisors. The advisors in turn suggested that perhaps this was really a test of the advisors, to see whether the interns' abdication would prompt the advisors to take control. In this particular case, both the problem of agenda control and the deeper underlying conflicts remained difficult issues for the partnership and for the case team throughout the semester.

75. Contract, *supra* note 43, cl. 4(A)(2). Few interns have altered this clause but one team deleted the second part, pertaining to decisions, because its members intended to discuss all proposed decisions thoroughly and they found the written requirement insulting.

resolved to be a proper matter for case team consideration. Often the interns' failure to discuss issues thoroughly before case team meetings is a result of inexperience in planning, or a failure of effective collaboration between the interns because of unresolved conflicts.[76] This seems to be an arena in which having a written contract, as opposed to making oral statements of how we prefer to work, makes a difference.[77] The writing raises the issue to the level of principle, and it is our impression that interns understand it more quickly than they otherwise would.[78]

The clause does not describe the role of advisors when secondary issues arise for the first time in a case team meeting—issues that the interns have never discussed because they arose from the team's consideration of related issues, and that the interns could not predict in advance would be relevant. The advisors are usually willing to raise questions about such issues, for later discussion between the interns, but they are less likely to offer suggested answers, particularly if the posture of the case does not compel urgent action.[79]

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76. Of course, there are also occasions on which external events occur so close to the scheduled hour of a case team meeting that prior partnership discussion is not practicable.

77. An episode involving a Social Security disability case illustrates the application of the clause. One member of a partnership wanted to hear their client's story, in an interview, before reading the government's file on her. The other wanted to view the government's file to help the partnership prepare for the interview. The issue emerged in a case team meeting, and it was plain that the interns had not discussed the problem with each other beyond identifying their disagreement. They asked the advisors to tell them what to do, and the advisors refused to do so, citing the clause. One member expressed his chagrin: "It's one thing to see these clauses on paper and another to experience them in practice." The case team meeting was at an impasse. The advisors suggested that the interns take a ten-minute recess to discuss what to do about it. During the recess, the interns resolved their dispute in favor of interviewing the client before seeing her file. They had concluded that it would be important to avoid the possibility that negative information in her records might unfairly prejudice their opinion of her or cause them to narrow the scope of the interview to the subjects addressed in the file. The interns were annoyed with the advisors, but they had the satisfaction of resolving their conflict and patching up their communication.

78. The factor of intern assent may also be important, but we are less certain of this. Our insistence on prior discussion might be easily accepted even if we promulgated it as a nonnegotiable rule.

79. This variant on the Socratic method, in which advisors are reluctant to answer the questions they raise, disturbs some interns, and it could be addressed in the contract. "I feel defensive," an intern once told the other members of his case team. "I know what I'm thinking when I come in to a case team meeting, and then it's like being challenged by a judge. I feel thwarted. The advisor's style has its advantages but it feels as though the advisors are two roadblocks to getting on with my case." This intern's dissatisfaction provoked him to propose a new clause for the team's contract, and the document was eventually amended to permit the interns to require the advisors to drop their distant stance and to engage in a four-way brainstorming during the meetings.

3. Quorum Requirements.—Two clauses govern which parties to a contract must be present for what kinds of communications. One clause specifies that all four members of the team should be present for all case team meetings unless other arrangements are agreed upon in advance;[80] the other prohibits interns and advisors from discussing "significant" case issues outside of case team meetings.[81] Issues other than "significant" ones are defined as those that do not affect the "direction or outcome" of a case or of the team's work.

The advisors inserted these provisions into their draft contract primarily because they were worried about imbalances in partnerships that might arise out of ex parte communications with advisors, and about making the partnership relationship secondary to that between interns and advisors. Before we used the clause, a member of a partnership who spent a great deal of time at the clinic might often engage one or both advisors in discussion about a case, and inevitably, new ideas for action would emerge from some of these discussions. This excluded the absent intern from important parts of the decision process. An intern who wanted to avoid working with his or her partner could even use such contacts to deprive the partner of a fair share of decisionmaking power. A second motive for including the clause was that an advisor who was absent from the clinic while engaged in other duties would occasionally feel deprived of a chance to participate in an important case decision.

The clauses have ended those problems, and have proved to be an effective curb on interns who tend to resist collaboration, but they have created several other difficulties. Many interns are immediately put off by the apparent remoteness of the advisors, and are fearful that they will not be able to get help when they need it. Assurances that they can call special case team meetings between those that are regularly scheduled are discounted by knowledge of how difficult it is to coordinate the schedules of four people. Some interns spot the problem when they first see the clause, and they negotiate changes, taking into account the advisors' concerns.[82]

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80. Contract, *supra* note 43, cl. 4(A)(3). It should be noted that this clause includes an exception which permits case teams to reduce the quorum requirements by prior arrangement. Each team makes such arrangements approximately twice in a semester, to accommodate interns or advisors who have to be absent for religious holidays, out-of-town interviews, and the like. Sometimes the arrangements include an agreement by those who will be present to tape record the meeting for the absent member or to report in some other way.

81. *Id.* at cl. 4(A)(6).

82. For example, one partnership contracted that either intern member could discuss "significant" issues with advisors, outside of the other's presence, but that this

Even those interns who do not anticipate that the clause will make communication with advisors too difficult may nevertheless discover this to be the case. An intern whose partner is not fulfilling case responsibilities may be precluded by the language of the clause from doing necessary work.[83] Problems involving dissatisfaction with the level of a partner's commitment have provoked frequent redrafting of the clauses, almost always in the direction of relaxing the strictures.[84]

By contrast, some interns, rather than requesting easier access to advisors, set up even higher barriers to advisor intervention than those proposed in the advisors' draft. In its initial contract negotiations, one partnership barred *any* discussion of case issues between interns and advisors except in case team meetings. All members of the team soon discovered, however, that so strict a prohibition made

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power would be exercised only when the client's interests would be "materially affected" by delays. Furthermore, each delegation of the authority to meet had to be separate and express; the intern who was present had to "represent the concerns of whichever of them was absent"; and the substance of the conversation had to be reported to the absent member of the team "at the earliest opportunity."

83. For example one intern, who found it increasingly difficult to work with her partner because he was rarely in the clinic, also felt no support from her advisors because they would not meet with her on the case unless he was present. At a case team meeting, an advisor asked a broad question about whether there were any filing deadlines in one of the cases. The intern in question erroneously thought that the advisor knew of an impending deadline but was withholding information. Increasingly worried that she and her partner had missed an obligatory deadline, she searched for a court rule that would cover the point and could not find one. She was unable to ask her partner to help, because he was not available. She believed that the contract clause constrained her from asking her advisors about the rule or its location, outside of a case team meeting. Finally, she approached one advisor and asked the question. Oblivious to her acute dilemma, the advisor raised the question of whether the contract permitted her to discuss the subject in her partner's absence, and the intern burst into tears. The advisor felt terrible. As drafted, clause 4(A)(6) did not prohibit interns from asking any questions, but merely required that prior to answering ex parte questions, the advisor and intern assess the significance of the issue. But the intern believed that the thrust of the clause was to discourage her from asking questions unless her partner was present.

84. The advisors' first version of the clauses simply barred case team meetings unless all members were present, but the advisors interpreted this to mean that no discussion of case issues could take place without convening the full case team. This proved too strict because trivial issues arose frequently, and convening the team presented logistical problems out of proportion to the issues at hand. The advisors amended their draft the following year to permit case discussions outside the team meetings unless the issues to be discussed were "significant." Furthermore, the interns and advisors who were about to have the discussion were required first to determine whether or not the significance test had been met. The interns objected to the two-step process and it was dropped in the latest version of the advisors' draft, which is discussed in this article. Even as presently worded, the clause often frustrates both interns and advisors who want to discuss significant developments as they occur.

the work extremely frustrating.[85]

An interesting aspect of the clauses limiting intern-advisor communication is that they are among the small number of clauses that advisors violate with any frequency.[86] The internal pressure to offer assistance to a conscientious intern who is asking for immediate help is very great.

4. Non-intervention.—The advisors' draft includes a clause prohibiting the advisors from intervening in case handling "by directing decisions or actions, except in a rare instance of imminent error that would seriously damage a client."[87] This clause was intended as one of two written embodiments of the principle of intern responsibility for cases, and it has proved controversial.

When the clause works as intended, case handling is structured to teach a variety of complex skills which could not be taught if the advisors intervened more frequently. One might reasonably wonder why we feel that this highly inefficient method of conducting litigation is preferable to the alternative of gentle guidance—e.g., offering to tell interns what we know of the relevant case law, or of research leads, without being asked. Our approach is designed to provide excellent client service, but, when there is no serious detriment to the client's interest, not necessarily efficient service. The inefficiency is designed to maximize the student's learning experience. Our goal is not for our students to become familiar with as much law as possible, but rather to be able to figure out what to do, what they need to know, and where to find needed information.[88]

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85. The interns wrote to the advisors that attempting to enforce the clause "resulted in indirect communication, and general dissatisfaction with the case team work." The team amended its contract to restore the advisors' draft language, along with a clause requiring that conversations outside of meetings be reported promptly to the absent members. But the interns noted that "the original rationale of making the interns use one another as a resource . . . is still an important concern."

86. Our observation has been that the female advisors tend to violate the contract in this respect significantly more often than male advisors. One explanation for this phenomenon may be that because the female advisors are graduate fellows rather than faculty members, they are regarded by the interns as closer to themselves in status and therefore more accessible than the male advisors. Whatever the reason, interns tend to approach the female advisors more often with questions—even if the advisor is not a member of the intern's team. Once approached, we have observed that the female advisors are more likely to answer the question. This may be because women are likely to exhibit greater sensitivity to maintaining relationships and less respect for established rules. *Cf.* C. GILLIGAN, IN A DIFFERENT VOICE 5–10 (1982) (describing early childhood socialization of women).

87. Contract, *supra* note 43, cl. 4(A)(4).

88. For example, one pair of interns agreed to the clause without modification. They spent much of the semester worried about the possible application of a Social Security

Implicit in the clause is our virtually invariable practice of having interns sit at counsel table and conduct hearings on their own. The advisors sit in the back of the court room in order to curb their own tendencies to intervene. Such interventions would reduce the interns' sense of autonomy.[89]

After the interns adjust to our highly structured methodology, most of them enjoy the freedom and the responsibility that they have in the clinic. But when they read the wording of this clause at the beginning of the semester, many of them find it deeply objectionable. It apparently has substantial shock value;[90] it drives home to the interns that they are really in charge of their cases. Therefore this is the most frequently amended clause, and most amendments are efforts to raise the safety net by inviting advisors to intervene more freely. If we think that interns are misreading the clause, and taking it to mean that we would not offer them any help, we call attention to the word "directing" and note that we help a lot, but usually by asking questions rather than by telling them what to do.[91]

A few interns have criticized the clause from the opposite perspective, believing that the advisors' reservation of the power to intervene, no matter how hedged by restrictions on its use, would undercut their authority as advocates. When we have thought that

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regulation which, if applied to their clients, would have resulted in a finding that she was not disabled, because her work skills were transferable from a task that she could no longer perform to one that she had never performed but might be able to do in the future. Their advisors knew of another Social Security regulation that assigned the burden of proof on transferability to the government and provided that the government could meet its burden only by using an expert witness, with advance notice to the client's representatives. Despite this knowledge, the advisors refrained from telling the interns not to worry about the regulation they had found. After about eight weeks, the interns found the second regulation on their own, and they experienced a sense of satisfaction and presumably learned a great deal about dealing with complex regulations.

89. The advisors are, however, available for impromptu case team meetings during recesses.

90. In discussions with other clinicians, we have found that it shocks some of our colleagues as well. Instructors in many other clinics apparently intervene much more readily than we do when students are handling cases in ways at odds with their own preferred strategies.

91. It is not surprising that this clause generated some problems, for there is an inherent tension between our duty to teach skills that students have never practiced and our belief that self-discovery is a superior educational instrument. The level of students' prior experience is often such that they do not know what questions to ask about their cases. Our challenge is to translate our experience, and our familiarity with the options available to them, into questions that will not altogether preempt their opportunity to find their way. Often this means that we are called upon to offer carefully constructed hints or clues, a process not unlike developing the questions in a traditional Socratic dialogue. This can cause students to feel the same outraged frustration that they often experience in more conventional law school courses.

the interns seemed able to accept the greater responsibility for which they were asking, we have agreed to their proposals. One alternate proposal that was adopted provided that if the advisors perceived imminent harm in a case, they had an obligation to try to persuade the interns to undertake a change in the direction of their work. The final decision, however, was left to the interns.[92]

For both interns and advisors, there remains the problem that there is never a bright line between "directing" interns' actions and manipulating interns' behavior by subtle questioning. One intern complained in a case team meeting that by suggesting to interns new options with respect to how they could handle their case, advisors "covertly" influenced how the cases were handled.

Despite our strong bias against intervention in case decisions, we occasionally have had to invoke the exception at the end of the clause. In a few such cases, the interns have disputed our claim that client harm was imminent, and have attempted to insist, pursuant to the main text of the clause, that we leave the matter to them.[93] It seems obvious that some exception must be included, and that the instructors must have the ultimate authority to decide, in the event of conflict, when the interns' conduct should trigger the exception.

5. Jointly Posed Questions and the Last Clear Chance.—Two different concepts are embodied in another fairly controversial clause in

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92. If this pair of interns had insisted on taking an obviously harmful action, we probably would have intervened despite the clause. We agreed to the clause only because we were certain that the particular team that was requesting it was extremely unlikely ever to present us with that kind of problem.

93. For example, when two interns representing a consumer debtor wanted to accept the creditor's offer of partial payment, their advisors were dismayed. The client was very happy with the proposed settlement, but the interns had not researched the law or thoroughly investigated the facts, and did not know—and had not advised the client—that there was a real possibility of filing a counterclaim and avoiding the obligation to make any payments at all. The advisors tried to require the interns to do some legal research but the interns cited the contract, claiming it precluded such intervention. After much discussion, the interns resentfully researched one of the seven or eight significant legal issues raised by the case, found that it did not create a good defense, and settled the case to the client's satisfaction without further consultation with the advisors. The advisors were disappointed, and the interns remained so angry about what they regarded as unwarranted intervention that both wrote term papers about the incident.

Arguably, the interns' reliance on the clause was misplaced because this might have been an instance of imminent error seriously damaging a client. On the other hand, the client's undeniable and unambivalent satisfaction with the offer may suggest that the risk of serious damage was not present. At the time this problem arose, no contract clause required interns to do the necessary research before recommending a course of action to the client. This case was settled, but such a clause was subsequently added to the advisors' draft. *See* Contract, *supra* note 43, cl. 4(B)(16)(e).

the advisors' draft. The clause provides that the advisors will respond to interns' "jointly posed" questions on law, strategy, procedure, and the like, after inquiring whether the interns want an additional opportunity to work on the problem themselves.[94]

The first part of this clause, like the clause requiring joint preparation for case team meetings,[95] reinforces the clinic's emphasis on collaboration. If a new issue arises in a case team meeting, the advisors are quite willing to share what they know, but they would be loathe to undercut a member of a partnership who wanted the opportunity to work on the issue without advisors' help.[96]

The procedural aspect of the clause is a much more lively issue. The concept of giving interns a "last clear chance" to answer their questions themselves derived from a central feature of the clinical methodology used at Columbia Law School, where the goal of the device was "not to send students away, but to make them responsible for deciding how to use supervisors as a resource, and to give them repeated experience with which to evaluate the consequences of their choice."[97] As at Columbia,[98] many clinic interns object strenuously to the clause, experiencing it as patronizing and insulting. They tell us that they would not ask questions if they were not sure that they wanted to know the answers. Curiously, however, interns object more vehemently to the clause than to the practice.[99]

As drafted, the clause is probably much too simplistic and limiting. In fact, the advisors can offer the interns a much broader range of responses than the polar extremes of answering their questions immediately or refusing to answer. They might, for example, per-

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94. Contract, *supra* note 43, cl. 4(A)(5).

95. Contract, *supra* note 43, cl. 4(A)(2).

96. To put it another way, we believe that when interns' goals diverge, the interns themselves should be given the first opportunity to resolve the conflict. A brief discussion in the case team meeting or a short recess often results in an expeditious resolution of the temporary impasse created when one member of the partnership asks for our advice but the other wants the partnership to develop the issue further on its own.

97. Meltsner & Schrag, *supra* note 20, at 22.

98. *Id.* at 25.

99. Two interns persuaded their advisors to drop the *clause*, with the understanding that the advisors could still ask the *question* (whether interns wanted an additional opportunity to work on the problem themselves). In a case team meeting these interns were trying to figure out where to find the man who had sold home improvement services to their client so they could serve him with process. They thought they had exhausted their resources and asked the advisors for ideas. When asked whether they were sure they did not want more time for further thought, they said that they did not. The advisor then suggested that they might trace the man by studying the markings on the check from their client, which he had cashed. One of the interns was grateful for the lead, but said that the advisor's question had made her feel "guilty and lazy" about asking for help.

mit the interns to choose among engaging in additional independent work, receiving a hint or prompt, being asked a leading question, being referred to published references, being directed to a person who might help them, or obtaining an immediate answer from the advisors. The advisors' practice, when asked a direct question, in fact depends on such factors as the ability and conscientiousness of the interns, the point in the semester at which the question is asked, and the urgency of the need for the information. Our actual responses are considerably more varied than the clause suggests, and the clause needs to be revised. Despite our discomfort with the present draft, we do think that some sort of clause imposing gentle procedural barriers is necessary to prevent both interns and advisors from falling into natural patterns of dependence on alleged experts. Such a clause reminds us not to accept the interns' casual invitations to take over management of their cases through subtle offerings of information or advice.[100]

6. Feelings.—One goal of the CALS curriculum is to help its interns to identify and learn from the feelings that accompany the transition from student to lawyer.[101] Therefore, the draft contract includes a clause whereby all members of the case team agree to discuss the process of their work and their feelings about it, and the advisors agree to help interns become more aware of the affective aspects of practicing law.[102] This clause legitimates interns' and advisors' expressions of emotions. It also legitimates advisors' proposals to add to the agendas of case team meetings such questions as the power dynamics, sexism, or racism within the team, competi-

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100. Two interns drafted and successfully negotiated the following amusing clause to replace the advisors' proposal:

> Advisors will not offer any unsolicited advice . . . . When interns ask for advice, a three-step process will be followed. First, advisors will answer "yes" or "no" to the questions: "have we missed anything?" and "have we made any errors of judgment?" Second, if the answer to either of the above is "yes," advisors will offer hints only, and only when they are requested. Third, upon interns' request, advisors will fully disclose their opinions . . . including how the advisors would have handled it. However, . . . if the interns are about to screw up royally, the advisors shall intervene to the extent necessary to prevent irretrievable harm to the client.

101. *See generally* Himmelstein, *supra* note 54 and Meltsner, *Feeling Like a Lawyer*, 33 J. LEGAL EDUC. 624 (1983). Typical examples encountered and discussed in the clinic include one intern's expression of guilt as he enforced his indigent client's financial claim against an equally indigent person who had sold her unsatisfactory automobile repairs, and a partnership's anger at its advisors for insisting that it put in order a messy case file which it had inherited from former interns.

102. Contract, *supra* note 43, cl. 4(A)(7).

tion between members of the partnership, and feelings about giving and receiving criticism.

Interns have accepted and made good use of this clause, although in several cases they have negotiated changes in its wording.[103] In our experience, working intensely in a case team for three and a half months virtually always involves intense experiences. Some of these occur between members of the team (usually interns) and outside actors such as clients, witnesses, counsel, court staff, and judges. At least as often there are serious conflicts between the intern members of the team or between one or both of the interns and one or both of the advisors.[104] Intuitively realizing that these conflicts mirror problems that are likely to occur in the practice of law, most interns are eager for the opportunity to examine questions in a supportive and confidential setting.[105]

Although the expression and analysis of feelings is a valuable part of our work, we also recognize the value of privacy, and we try to respect an intern's decision to keep feelings confidential. The contract clause "encourage[s]" rather than compels discussions of process and expressions of feelings. For both interns and advisors, examination of when feelings should be expressed and when withheld is a matter of continuing attention.

7. Evaluation of Meetings.—In the fall of 1982 when we had just begun to work with the device of contracting, two interns found their case team meetings increasingly frustrating. The way that their advisors were invoking various contract clauses made them uncom-

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103. The unfamiliar word "affective" has confused some interns, but the most significant drafting problem is that the advisors' clause reflects their unwarranted assumption that they have a monopoly on being able to help other members of the case teams to explore feelings. Several case teams have changed the clause to provide that each member of a case team will endeavor to help the other members to become more aware of their feelings and of how those feelings are affecting the work of the team. If the advisors were to present the latter version originally, it might be less patronizing but would blur the basic role distinction of teacher and student and might subvert the primary goal of the case team, which is to advance the learning of the students.

104. Although conflict between members of a case team is the most frequently explored interpersonal issue, many other emotional aspects of the case team relationship (e.g., sexual attraction between the partners; stereotyping based on class, race, gender, or age; the impact of interns' feelings about the advisors' power to award grades) affect the work of the team and are considered in case team meetings.

105. The written contract may be especially helpful in creating an atmosphere of safety, within which risky or stressful conversations can be initiated. All of the people involved have signed their names to a document in which they state that they want to talk about feelings. Implicit in this pact is an understanding that personal remarks will be respected, and certainly never put down or mocked.

fortable, but they felt bound by the contract and therefore helpless to protest. Finally, they proposed amending the contract to require the last five minutes of each case team meeting to be devoted to an intern-led evaluation of how successful the meeting had been. Their innovation proved so spectacularly productive that the advisors added it the next semester to their own proposal, and it has remained in the advisors' draft ever since.[106]

Because the interns control the agenda of case team meetings, the intern members of a case team must take responsibility for suspending substantive discussion in order to use the last five minutes for review. They do not always do so, and some partnerships rarely make the time.[107] But when these brief reviews are held they are usually highly productive. It seems that the short period of time available for review makes it safer to speak frankly, so criticism of how the meeting has been conducted tends to be very direct and constructive.[108]

8. Confidentiality.—The advisors' draft contains a clause barring advisors from reporting the content of case team meetings to other interns, although they may discuss such matters with the advisors who are not members of the team.[109] The purpose of the first part of this provision is to make sensitive revelations (e.g., about partnership conflicts) safer; of the second, to enable advisors to seek help from their colleagues[110] when new and difficult problems pres-

106. Contract, *supra* note 43, cl. 4(A)(8).

107. When that happens, the advisors usually call their attention to the omission at the end of the meeting. Sometimes case teams respond by suspending the contract to extend the meeting for five more minutes. More frequently, the meeting ends without the evaluation. There is a strong correlation between the ability of interns to make time for case team meeting evaluation and their success in managing their time generally.

108. Very often, the issues raised in evaluation of the *meeting* help the case team to identify more significant problems affecting the work of the team. One partnership decided that it had not planned its agenda very well. An advisor agreed that was so. They said that they had not worked well together when they tried to plan it. This revelation opened the door to a discussion of the interns' problems in collaborating. On another occasion, during the last five minutes of a meeting, a female advisor pointed out to a male-female team that during the meeting, the male member had looked at and spoken to their male, more senior advisor much more than their female advisor and that the male advisor seemed unaware of the imbalance. This comment opened up questions of gender and authority which were of great importance to the team, and which continued to be a subject of discussion.

109. Contract, *supra* note 43, cl. 4(A)(9).

110. While it is surely possible to offer a clinic with fewer than four instructors who spend most of their time on teaching in that institution, we would discourage any law school from establishing a clinical program managed by only a single instructor. Even if the number of students is kept small, a minimum of two instructors seems essential be-

ent themselves.[111]

The clause seems very important when a personal fight occurs because it ensures that the strained relations in a case team will not become a matter of general gossip unless the interns make their conflicts public.[112] Similarly, admissions of anxiety about skills or about becoming a lawyer can be discussed behind closed doors in case team meetings without spreading to a wider audience. A perverse side effect of the clause is to make it seem to most interns that what happens in case team meetings is somehow very secret. Though the clause bars only *advisor* revelations and explicitly authorizes interns to share information about meetings with their peers, some interns tend to feel bound not to do so. As a result some partnerships may think that they are the only ones who are experiencing interpersonal conflict, or having trouble accepting responsibility, or finding it difficult to manage the agendas of the meetings. Valuable opportunities for comparing notes are lost and must be recaptured through other clinic institutions.[113]

Interns are sometimes concerned that the restrictions on advi-

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cause of the psychologically demanding nature of the work and the importance of collaboration and support to creative clinical teaching. *See* Meltsner & Schrag, *supra* note 38, at 601 n.33.

111. One example of effective use of the advisors' group to solve case team problems involved an acute conflict between one partnership and its advisors over standards of client representation. Unresolved after two months, the problem reached such a fever pitch that voices were raised throughout one case team meeting. The interns felt criticized, and the advisors felt disrespected and powerless to ensure adequate service to the client.

A meeting of the advisors was called to discuss the problem. One advisor suggested bringing an outsider—perhaps another intern—into the team to act as a mediator in the next meeting. The advisors for the team took the suggestion back to the interns, who adopted the idea and invited another advisor into the meeting. The mediation session was very productive and relations within the team took a dramatic upswing.

112. Some interns do elect to put their conflicts on display. One team was in fierce and constant disagreement, and the interns spent almost all of their time discussing their relationship rather than working on their cases. After the advisors invoked the "imminent risk of harm to the client" clause and said that the work must be done, the interns decided to split up their work and have only minimal contact with each other. They informed all the other interns about their "divorce" and their conflicts became a major topic of clinic conversation.

113. One such institution is the weekly "Friday group." Each Friday, an hour of class time is devoted to several simultaneous meetings in which small groups of interns and advisors share problems of common concern. *See* Manual, *supra* note 41, ch. 5. But interns are often reluctant to penetrate the boundaries of case team meetings even in Friday groups. The tendency toward privacy is so extreme in some cases that when, by chance, one intern's unfinished case was assigned to her roommate the following semester, the ex-intern refused all of her roommate's entreaties to tell her anything that anyone had said about the case in case team meetings. (In part this was because the intern knew that the advisors would resist giving advice or direction to her roommate to make

sor communications are not severe enough. These interns are aware that all four advisors participate in assigning grades, and they worry that their advisors are reporting to the other advisors only the problems, and not the successes, of the team.[114] Their uneasiness has led a few partnerships to negotiate an amendment to the clause that requires the advisor members of a team to report back to the interns the substance of any conversations about the work of the team that they have had with other advisors.[115]

9. Evaluation of Case Teams.—The advisors' efforts to maintain a supportive atmosphere make it very difficult for them to offer complete feedback on interns' work. Some of us have a hard time saying anything negative to interns with whom we have become personally close. But we would do the interns a disservice by shunning involvement in overall evaluation. We have included in our draft contract a clause requiring a "substantial evaluation of how the case team is working" during the last case team meeting under the contract.[116] The purpose of the clause is to prod ourselves as much as it is to affect intern behavior. Since the initial contracts usually expire in four to six weeks, this clause should require two evaluation sessions in a term—one after a month or so, and one at the end of the semester.[117]

In keeping with our philosophy of encouraging intern responsibility, evaluations begin with intern self-evaluation. Self-criticism

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her think through the issues herself. The alumna did not want to subvert the clinic methodology by advising her roommate.)

114. The advisors who do not work with interns in case teams participate in their grading (but with more lightly weighted votes) because they work with them in the other clinic settings. Like other Georgetown courses, our clinic is graded on an A-to-F scale. For many reasons, we do not think that grading clinical performance can possibly be fair to students. But for other reasons (because most students want their transcripts to include grades for clinics, and because they think that credit/no credit clinics will eventually acquire reputations as "soft" courses), we continue to grade. These issues are explored at length at Manual, *supra* note 41, ch. 9.

115. Some partnerships have asked that advisors be barred altogether from discussing the team's work with other advisors, but no contract has yet included this provision. Advisors have occasionally agreed not to discuss particular matters with the other advisors.

116. Contract, *supra* note 43, cl. 4(A)(10).

117. Interns are free to contract for evaluations to occur at whatever intervals they prefer. In practice, only a few interns schedule an evaluation other than at the end of the semester. Thus the only thoroughgoing evaluation is conducted in the final case team meeting. On the other hand, at least one team contracted for monthly evaluation meetings. Of course most case team meetings include some evaluation of recent written or oral performances, but meetings devoted exclusively to evaluation are usually more intense.

works surprisingly well, and interns usually have a very balanced view of their own abilities and performances. In addition to intern self-evaluation, meetings often include advisor evaluation of intern work, intern evaluation of advisors, and advisors' self-evaluation. When evaluation meetings work well, they tend to generate new revelations or insights, thoughts that may have been too risky to voice during the term.[118]

10. Assignments.—The least successful clause in the advisors' draft contract authorizes the advisors to propose "short assignments" to intern members of the team, which the interns may accept or reject.[119] Intended as a way of giving interns a chance to work on skills in which they had special interests when their cases did not provide sufficient outlets for practice of those skills,[120] the clause has been invoked more frequently by advisors who sense that the interns with whom they were working were not being thorough or rigorous. Most frequently, advisors have asked interns who seemed to be drifting whether they wanted to consider an assignment. Inevitably, the interns have said that they did, while inwardly feeling the suggestion to be an accusation of failure and a dose of punishment in the form of extra homework. The very word "assignment" has at times transformed otherwise exciting, dynamic work into legal drudgery.

The advisors, have questioned whether the clause is at all con-

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118. One team finally got around, at its final meeting, to discussing the fact that one intern's being black in an otherwise white case team had had numerous effects on the work of the team. The advisors admitted that they had found it harder to make critical appraisals of her work than if she had been white; she volunteered that she had been defensive about the criticism she had received because she was afraid of being judged by whites. In another final meeting the interns revealed that in view of their closely collaborative work style, they were terrified of being judged against each other. Neither wanted a higher grade than the other received, so they asked the advisors to grade them identically. The advisors agreed, largely because their work was of similar quality.

119. Contract, *supra* note 43, cl. 4(A)(11).

120. Some assignments have fulfilled the initial promise of the clause. One intern was having a particularly difficult time speaking up in the clinic's weekly seminar meetings. She and her partner (who did not speak very often in meetings either) accepted the assignment of studying each of their own impulses to speak in meetings. This included: (1) what the intern wanted to comment on, (2) whether and how the intern got the floor, and (3) what feelings were generated by making the comment or not making the comment. This work led both interns to discover the sources of their hesitance and to develop strategies for getting the floor. Thereafter both interns participated much more extensively in discussions. In another case team, an intern found himself utterly out of control of his time, and sought the advisors' help; they assigned him to keep time sheets showing how he spent his days, and to analyze them to find out what caused him to fall behind.

sistent with their desire not to become "bosses." To be sure, such a clause permits interns to reject any and all assignments, but given the power imbalance between advisors and interns, this option may be more illusory than real. In any event, although interns do not express much hostility to this clause when they see it in a draft contract, their comments suggest that the clause puts advisors in a role they prefer to avoid. Although we continue the practice of occasionally suggesting assignments to interns, we omitted the clause from the draft contract in the fall of 1985.

11. Meetings.—A relatively uncontroversial clause in the draft contract allows the case team to set the duration and frequency of its meetings.[121] Most interns want to have weekly, hour-long meetings although we have contracted with some teams for two hourly meetings a week and with others for weekly meetings of up to two hours. Advisors turned down a suggestion that a team meet for 35 minutes a week because so limited a period would not permit sufficient reflection on the events of the previous week or the current dilemmas posed by the cases.

Interns occasionally attempt to circumvent this clause. A meeting is suddenly cancelled because an intern has to be elsewhere, and no one takes the initiative to reschedule it. An intern leaves town for two weeks of job interviews, and no advance arrangements have been made for a meeting in that intern's absence. A contract clause specifying a regular meeting time makes such circumstances more conspicuous, and therefore easier to address.

12. Case Handling.—A substantial portion of the draft contract regulates minimum standards for case handling.[122] Various clauses require the intern members of the team to keep their files orderly, comply with the *Code of Professional Responsibility*, interview their clients promptly, specify a period of time before briefs are due during which advisors may review their drafts and the like. These clauses also include the interns' basic obligation to "be responsible for making and executing all decisions relating to the case." The advisors, too, are assigned responsibilities, such as giving the interns feedback on their interviews, hearings, and briefs; helping them in "moot" trials of their cases; and periodically reviewing the case files.

We are much more willing to conduct genuine bargaining over clauses governing our relationships with interns and more tenacious

121. Contract, *supra* note 43, cl. 4(A)(12).
122. Contract, *supra* note 43, cl. 4(B).

in our adherence to those clauses setting forth standards of practice. The standards of practice set forth in this portion of our draft contract are so basic that we are unwilling to bargain them away. Accordingly, this portion of the contract may be a contract of adhesion to the advisors' terms and perhaps it would be better if such terms were in a separate part of the contract or in another document explicitly identified as nonnegotiable.

An alternative to the disclosure of nonnegotiable terms might be their omission from the contract, to avoid the appearance of dictated terms. But disclosure of the rules—perhaps especially of rules as to which interns have little influence—seems highly desirable. Indeed, some of the clauses in this section arose from problems involving our initial lack of clarity about case teams' minimum responsibilities.[123]

13. Other Terms.—The advisors' draft includes several lines on which the interns can propose clauses of their own, although they rarely do so. It may be that the clauses we have proposed cover the field of working relationships so thoroughly that it would be difficult for interns to find additional areas in which to make suggestions. More probably, the interns may be so exhausted by the time they have finished arguing with each other about how to respond to each of our ideas that they have no energy left with which to develop concepts of their own. In any event, their efforts to modify our clauses have not been matched by proposals for new terms.

14. Enforcement.—No enforcement clause appears in the advisors' draft contract. Its omission reflects the advisors' view that chastisement, however softly executed, is a relatively ineffective

123. For example, the advisors were uncertain, when the Fall, 1982, semester began, as to whether each case team would have to be responsible for two cases or three. When at mid-term the advisors proposed to require the handling of a third case, a tense clinic-wide battle between interns and advisors broke out. In subsequent semesters, the three-case requirement was disclosed in the contract. Similarly, for two or three semesters we were unclear about whether interns could refuse to represent a client after they conducted their initial interview. We had vaguely told interns that, like lawyers, they had responsibility for deciding whether to accept a case, but we had also told some clients, before the semester had started, that our interns would represent them. When the interns learned of this communication, they were rightly furious. We included in the contract a clause, intended primarily to forestall ourselves, permitting interns to turn down a case for good cause. Like many vague legal standards, this one solved some problems and created others. Two interns wanted to turn down a Social Security disability client because they thought her case was marginal. There followed a conflict between interns and advisors about the definition of "good cause" and who had the power to interpret the phrase.

method of teaching.[124] Although it is possible to imagine several ways in which departures from the contract would be formally addressed,[125] the advisors have preferred a regime in which contract violations are merely discussed informally, at the behest of any case team member, in case team meetings. Advisors might point out that the members of the case team had agreed to a certain kind of conduct and that the standard was not being observed. Sometimes, advisors merely recall the aspirations expressed by team members at the beginning of the semester, and contrast them with what is happening at this later juncture. They may refer obliquely to the existence of a contract and initiate a four-way discussion of a particular problem and its possible solutions.[126]

IV. LEARNING CONTRACTS IN TRADITIONAL LEGAL EDUCATION

Translating the experimental use of learning contracts from clinical to traditional legal education may seem quite difficult. Student/faculty ratios are much higher in non-clinical offerings and less time is spent with individual students. The goals of individual enrollees may be much less varied. And the emphasis on or deliberate use of a particular methodology is usually less explicit.

Nevertheless, some form of learning contract may be valuable, at least experimentally, in traditional legal education, and it may be possible to adapt some of the devices described above to non-

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124. The advisors' expectation, subsequently confirmed by experience, was that they, rather than the interns, would most often be aware of any violations of contract terms, and that they would therefore bear a disproportionate burden of enforcement. This pattern is not surprising, given the advisors' primary responsibility for pedagogical method. Grading further complicates contract enforcement because a few interns wrongly believe that an intern who argues about contract interpretation will thereby receive a lower grade.

125. Formal enforcement devices might include a mechanism for adjudication of infractions (e.g., arbitration by other advisors, interns, the office manager or some combination of them, or a "trial" in which advisors and interns could exercise their practice skills), and sanctions (e.g., reflecting a violation in the interns' grades or the interns' formal evaluation of advisors; posting a description of the violation in the clinic; or requiring the violator to write a proposal for preventing a recurrence).

126. Schematically, advisors could deal with disappointing intern behavior by saying, among other things, "You did something bad" (noncontract, behavior-oriented), "You broke our rule" (noncontract, rule-oriented), "You said you were going to do it this way, but you didn't" (contract, behavior-oriented) or "You broke your own rule" (contract, rule-oriented). We have probably talked with interns in all terms but the second, with an emphasis on the third and fourth. But with the contract remaining in the background, we also sometimes say only that "You did the following. What do you think about that?" (noncontract, behavior-oriented, nonjudgmental). Perhaps this variant on the first response is an improvement; or perhaps it is, at least some of the time, a manipulative attempt to force the intern to engage in self-criticism.

clinical settings. Indeed, one way to characterize a traditional classroom is that a somewhat informal learning contract is already in effect. It may be very rudimentary, in that the instructor may have established all of its terms and revealed them only haphazardly. The students' consent may have been given only by their selection of the particular course or of the particular law school. But there is nevertheless a contract with multiple parties and interlocking obligations. The instructor promises (at least) to hold lectures or to lead discussions on particular topics and the students promise (at least) to pay tuition, to read significant portions of "assigned" materials, and to take an examination or to write a paper on which they will be graded. In fact, such contracts usually contain many more terms, often disclosed by the instructor to the students on the first day of class, including requirements about class attendance, preparedness, and participation. In seminars, there may also be quite explicit expectations about student responsibility for leadership of some of the class sessions.

The question is not whether law school instructors should try using learning contracts, but whether they should experiment with changes in the contracts they already use. Should such contracts be more explicit? Should their terms be better disclosed? Should students be given a larger role in formulating their terms? And would any of the features of the contract that CALS uses—such as the initial emphasis on goals, the partnership rather than the individual as the central focus of learning, the five-minute or mid-term evaluation sessions, or the mutual permission to discuss feelings—make traditional classroom teaching more effective?

While most of these questions cannot be answered abstractly, we offer our encouragement to others to experiment and report on their work, and we offer a few observations about why we think our ideas can and should be used in the law school classroom.

Writing out a learning contract has improved our teaching by forcing us to make educational decisions explicit and to be clear with ourselves about what we are doing. Even if we did not give students a role in shaping their education, and did not reveal our decisions about how we intended to teach, the experience of putting our goals and our methods on paper has helped us develop successful innovations and discard counterproductive and inconsistent ideas.

In addition, it seems clear that full disclosure of all of the instructor's goals, his theory of education and his expectations regarding student conduct is well worth what little time such disclosure

consumes.[127] In our experience, students appreciate knowing what to expect—not only what readings will be required, but also how serious a teacher is about preparation, how the teacher is likely to respond to a wrong answer, whether students' personal political views are welcomed or discouraged in class, and so forth.

This type of disclosure is not very difficult. One of us has taught a non-clinical course in professional responsibility for more than 50 students. Her course materials[128] include a sixteen-page memorandum on teaching goals and methods. The memorandum reveals her aspirations for student participation in the course as well as her thoughts on classroom dynamics.[129]

The most controversial aspect of translating our clinical experience to the traditional classroom is the possibility of involving students in decisionmaking with respect to the educational program. If, as the literature and our CALS experience suggest, students work harder and learn more when they are given the opportunity to voice their goals and to take greater responsibility for how they learn, it may be useful to allow the students to have a voice in some methodological decisions. It may be desirable, for example, to let the students decide such questions as how many pages they will be required to read. The instructor may begin with the view that the thousand pages that he has selected are essential for minimum cov-

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127. Oral disclosure of the most important terms is probably necessary to make sure that they are understood. In fact, as noted above, parts of the first classes in most courses are spent announcing materials, assignments, evaluation, etc. The disclosure contemplated here might simply add a few topics to the standard list of initial announcements. It may be useful to augment the oral disclosure by distributing a memorandum on one's educational goals at the beginning of the term. The CALS Office Manual includes about 130 pages on our teaching methodology, which we assign to be read before our first class; obviously, one need not go quite that far in order to reveal what one expects to happen in a course.

128. L. Lerman, Supplemental Materials for Professional Responsibility, West Virginia University College of Law (Fall 1984) (unpublished course materials).

129. The memorandum describes the instructor's own law school student experience, in which those who made comments in class that were not acceptable to the whole group (e.g., references to Marxist literature, or emotional statements about the death penalty) were ostracized, and it states the instructor's intention to avoid this phenomenon. By periodically breaking the class up into several smaller groups that hold simultaneous discussions, the professor encouraged students who are normally silent to experiment with more active roles. The memorandum urges those who tend to speak often in class to make room for the others and invites all members of the class to make comments, at any time, about the process of the class (e.g., monopolization of air time by a few); it also acknowledges that "raising process issues is difficult and anxiety-producing." Other issues addressed in this disclosure memorandum are role playing, students' shared responsibility for what happens in the group, expectations about preparation, the conditions under which nonvolunteers will be called upon, assignments, and grading.

erage of the material, but discussion with the class may reveal that only fifteen percent of the students will read more than six hundred pages in any event. Armed with that knowledge, the instructor might scale back his ambitions and select the most important six hundred pages. In exchange for his doing so, the students might contract to assure him that they will read those six hundred pages on time so that class discussions are more lively. Similarly, it might be desirable to let students decide such questions as whether they will call their instructor by his first name; whether or not they will be called upon when they have not volunteered;[130] whether students will take responsibility for encouraging widespread oral participation; how the instructor should divide his time between lecturing, leading discussions, administering role plays, and using other teaching methods; whether some of the classes should be student-led;[131] and whether class participation will be factored into grading.

Obviously, real negotiation of matters such as these, as opposed to mere disclosure, takes precious classroom time. We are not suggesting that it would be feasible to enter into individualized oral contracts, much less written agreements as in CALS, in classes having dozens of students. On the other hand, three steps in that direction might be possible. First, one might reassess the present balance, in most law school classes, between time spent in class on content and time spent on process. It is common for process to be mentioned only on the first day of the term, and then avoided, as if discussions of how the course was going, and how it could be improved, would pollute rather than enhance the substantive learning. It might be advantageous for instructors to conceptualize a class, as we do, as encompassing simultaneous substance and process agendas. This formulation makes it easier to observe that there always lurks below the surface the question of whether the balance between the two needs to be adjusted.[132]

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130. One of us has contracted on this issue with the students taking a nonclinical course in administrative law. The students reached a consensus against being called upon when they had not volunteered, and they promised to keep discussions rolling. More than 80% of them participated actively in the class throughout the term. The instructor later permitted them to decide the duration of their examination.

131. Student-led classes are, of course, a common feature of seminars, particularly when students are discussing papers they have written. In general, student presentations are required of all or of no one, and the instructor decides this issue. One of us has taught a seminar in family law in which students were permitted but not required to make presentations to the class. About half the class elected to present their papers; the presentations were generally lively, creative, and provocative.

132. In a first-year course for 130 students, one of us distributed a midterm evaluation questionnaire to find out how the course was going. Comments on this form re-

Second, contract negotiation in a large class might be analogized to collective bargaining. It may be impossible to individualize a learning contract to suit the desires of each person, but it may be possible to discern a consensus within the class on some of the matters listed above, such as the size of the reading list. In some cases (particularly, perhaps, in courses on labor law), it might be worth the necessary investment of time to organize an election of student representatives to bargain over process issues.

Finally, a degree of individualization might be possible even in a large class. If a discussion revealed the presence in the class of discrete sub-groups, some portion of the instruction might be tailored to suit the needs of the groups. A sharing of goals at the beginning of the course might reveal, for example, that some students wanted more emphasis on an historical approach to the material, while others were interested in currently controversial policy debates, and still others were primarily concerned about material that would be covered on the bar exam. Some portion of the course might then be devoted to elective readings, and for two or three weeks of the term the various groups might meet in different rooms for a series of student-led small group discussions, with the instructor visiting each room either periodically or for part of each session.[133]

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vealed that although the instructor had complained that too few students volunteered, from the students' perspective, the instructor called on the same people all the time and ignored newcomers to the discussion. The instructor assumed that this perception was correct and he asked for suggestions on how to solve the problems. Because the students were initially hesitant to respond, the instructor suggested a "two-hands" rule—those who were not the regular talkers would make themselves more visible by raising two hands to volunteer. After the students roundly booed this notion the instructor then turned the problem over to the class members, who, after a brief discussion, suggested that the class might proceed best if hands were not raised at all. Anyone who wanted to talk would simply do so, taking some care to make sure that only one person was talking at a time. The instructor agreed to try this system, and to his surprise, it worked very well. A much larger proportion of the class participated in the discussion, and there was no problem of multiple conversations, even with so large a group. The system was continued, with equal success, for the remainder of the term. This incident illustrates that it is possible and at least sometimes desirable to discuss and negotiate classroom procedure even with a very large group of students in a traditional law school course.

133. The image of law students meeting without an instructor during class time may seem shocking to some. If so, this may reflect the power of paternalistic assumptions prevalent in the law school community. In the clinic we have observed many successful classes in which we played only the smallest of roles, and we have been told of others that took place without us while we were part of a different meeting. These were small groups, and it may be much more difficult for students to lead discussions of a dozen or more other students. On the other hand, we have first-hand knowledge of highly suc-

We are not sure that we have even part of the answer to the malaise that besets legal education.[134] We do know that our methodology, part of which involves using learning contracts through which we divest ourselves of some of our power, is well received by most of our students.[135] It inspires many of them to realize that they can make intelligent decisions about what and how to learn, in law school and thereafter. We have seen students balk at accepting responsibility, identify their fears, and overcome them. It seems unlikely that learning contracts, by themselves, are responsible for more than a small fraction of the student growth that we have observed, but they have forced us to face more squarely the issue of whether we tend to treat our students as children or to respect them as colleagues.

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cessful law school role plays for large groups of students in which the instructor was only an occasional observer. *See* Schrag, *supra* note 65, at 19.

134. *See, e.g.*, Savoy, *Toward a New Politics of Legal Education*, 79 YALE L.J. 444 (1970); Margolick, *supra* note 29, at 20.

135. We also have a small amount of comparative experience. In 1984-1985, two of the co-authors directed the clinic at West Virginia University. Their methodology was very similar to the methodology used at CALS, except that they only disclosed their expectations about intern-advisor relationships and asked the interns to express any reservations; they did not negotiate written learning contracts. Both of them concluded within a few weeks that working out formal contracts would have been better, in that ambiguities about expectations would have surfaced and been resolved at an earlier stage; interns probably would have felt that they had a greater hand in creating their learning environments; and advisors would have had a sounder basis for calling interns to account for lack of preparedness or other unacceptable conduct.

APPENDIX

LEARNING CONTRACT

This contract describes the agreement of the case team members listed below. It will govern all case team matters.

1. Parties to this contract are:

INTERNS	ADVISORS
_____	_____
_____	_____

2. Duration. This contract shall be in effect from _____ until _____, by which date the interns shall initiate a contract review by the case team. This contract may then be renewed or amended, or an entirely new contract may be made.

3. Learning Goals.

Part I

During the semester, interns will probably do some work involving the exercise of each of these skills. The amount of work in each area is determined largely by chance, in the sense that different cases present different kinds of problems. But to some extent, the case team can control the emphasis on particular skills by making special efforts in certain directions. Therefore, the interns (either individually or as a pair) may initial two or three skills on this list on which they wish special emphasis to be put:

_____ knowledge of substantive law relating to consumer and social security issues.
_____ legal writing
_____ oral advocacy
_____ interviewing and counseling
_____ negotiation
_____ legal research
_____ strategic planning
_____ fact investigation

Part II

The Center for Applied Legal Studies endeavors to help its staff achieve more general professional goals as well. In Section 1 of this Part of the form, each of the interns should list the more general goals that they want to pursue in the case team (see the Office Manual for further explanation). In Section 2, they should describe what

obstacles might prevent them from achieving these goals. Section 3 is self-explanatory.

Intern's Name: _____

Section 1 — Goals

1. _____

_____

2. _____

_____

3. _____

_____

Section 2 — Obstacles

_____

_____

_____

_____

_____

_____

_____

Intern's Name: _____

Section 1 — Goals

1. _____

_____

2. _____

_____

3. _____

_____

Section 2 — Obstacles

_____

_____

_____

_____

_____

Section 3 — Implementation

Jointly describe the ways in which the two interns might begin to work together toward achieving their goals and overcoming the obstacles:

4. Role relationships: This section of the contract describes elements of the working relationships between interns and advisors in the team. As is more fully described in the Office Manual, the interns should describe [in the space provided] why they are including, deleting, or amending each proposed clause, and they may add clauses not proposed by advisors.

A. Clauses governing case team meetings.

1. Interns will take the lead in developing and executing the agenda for each case team meeting, although advisors may propose additions to the agenda.

2. Prior to each case team meeting, the interns will discuss thoroughly the issues they expect to arise, and if decisions will have to be made, they will make at least tentative decisions before the meeting.

3. All members of the case team should be present at all case team meetings, unless other arrangements are agreed upon in advance.

4. Advisors will not intervene in intern case handling by directing decisions or actions, except in a rare instance of imminent error that would seriously damage a client.

5. Advisors will respond, to the best of their abilities, to interns' jointly posed direct questions on points of law, strategy, procedure, etc., but before doing so, they will first inquire whether interns want an additional opportunity to work on the problem themselves.

6. The interns may discuss cases with other Clinic members at any time, but interns will discuss significant case issues with advisors only during regularly or specially convened case team meetings. Interns may talk with advisors about case team issues outside of such meetings, unless the issue is one that involves a decision affecting the direction or outcome of a case, or the direction of the work of the case team or of the intern partnership.

7. All members are encouraged to discuss the process of the work of the case team or partnership, and to express feelings about

that process. Advisors will try to help interns become more aware of the affective aspects of practicing law.

8. The last five minutes of each case team meeting will be devoted to an evaluation of the meeting, led by the intern members.

9. The interns may freely share with all other Clinic members any information about cases or case team meetings unless the client requests otherwise, but the advisors will not disclose to other interns the content of case team meetings unless explicitly authorized by the interns. Advisors may discuss the content of case team meetings with other advisors and with the office manager unless otherwise negotiated.

10. At the last case team meeting before the expiration of this contract, there will be a substantial evaluation of how the case team is working. This discussion will begin with self-evaluation by the intern members.

11. Advisors may propose to interns short assignments that may or may not be directly related to handling the cases. These may include, for example, readings, role plays, and short memoranda or

other writings. The interns need not accept these proposals, but they will carry out any that they do accept.

12. The case team will (pick one):
____ meet weekly, at _____, or more often as needed.
____ meet as follows: _____
_____
Unless otherwise agreed, the duration of each case team meeting will be _____ minutes.

B. Clauses governing case handling.

13. Each intern partnership will handle at least three cases during the semester. If a case "washes out", the advisors may assign another case to replace it. Interns may negotiate to take additional cases.

14. Cases are assigned by advisors, but for good cause, interns may refuse, before being retained orally or in writing, to represent a client. Once they accept a case, interns will be responsible for making and executing all decisions relating to the case. They will represent the client until the conclusion of the semester or the case, whichever occurs first, unless some unforeseen circumstance necessitates early withdrawal.

15. Interns will keep files orderly and up-to-date in accordance with the guidelines stated in the memorandum included in each case file.

16. Interns will proceed expeditiously in all cases as soon as they are assigned, including:

(a) Interviewing the client within two weeks of the case being assigned unless that proves impossible; and, as agreed in the case team meeting, either arranging for at least one of the advisors to be present at the interview or making a tape of that initial interview.

(b) Preparing a case plan and a schedule of the work anticipated in each case early in the process;

(c) Scheduling briefs and other documents to allow for advisor review and intern revision prior to filing unless negotiated otherwise for educational reasons; and, in the case of major briefs or DCRA petitions, submitting first drafts to the advisors at least ____ weeks before they have to be filed;

(d) Endeavoring to complete all cases before the last day of classes;

(e) Researching fully the facts and law of a case before recommending a course of action (including settlement) to a client; and

(f) Complying with the requirements in the Office Manual regarding Administrative Matters and Case Closeout Procedures.

17. Advisors will:

(a) Attend the interns' initial interview with each client or listen to a tape recording of that interview;

(b) Periodically review the case file;

(c) Ensure that at least one of them is present as an observer at all hearings, trials, formal settlement conferences on court or agency premises, or other proceedings;

(d) Read any briefs to be filed with a tribunal, and any written proposals of settlement, as well as any other documents and earlier drafts that the interns request them to read;

(e) Assist in mooting cases prior to hearings, if the interns request such assistance;

(f) Undertake such additional action as may be mutually agreed in the course of case team meetings.

In some cases these responsibilities may be delegated to one of the two advisors on the case team.

18. Interns will keep clients apprised of all action taken in a case.

19. Interns will comply with the Code of Professional Responsibility and the student practice rules of any tribunals in which they appear.

Other terms and conditions: _____

_____

_____

_____

_____

_____

This contract may be reviewed, suspended, modified or terminated by the unanimous consent of the parties at any time.

_____ _____

_____ _____

Interns Advisors

_____

Date